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Supreme Court of the United States

[redacted]

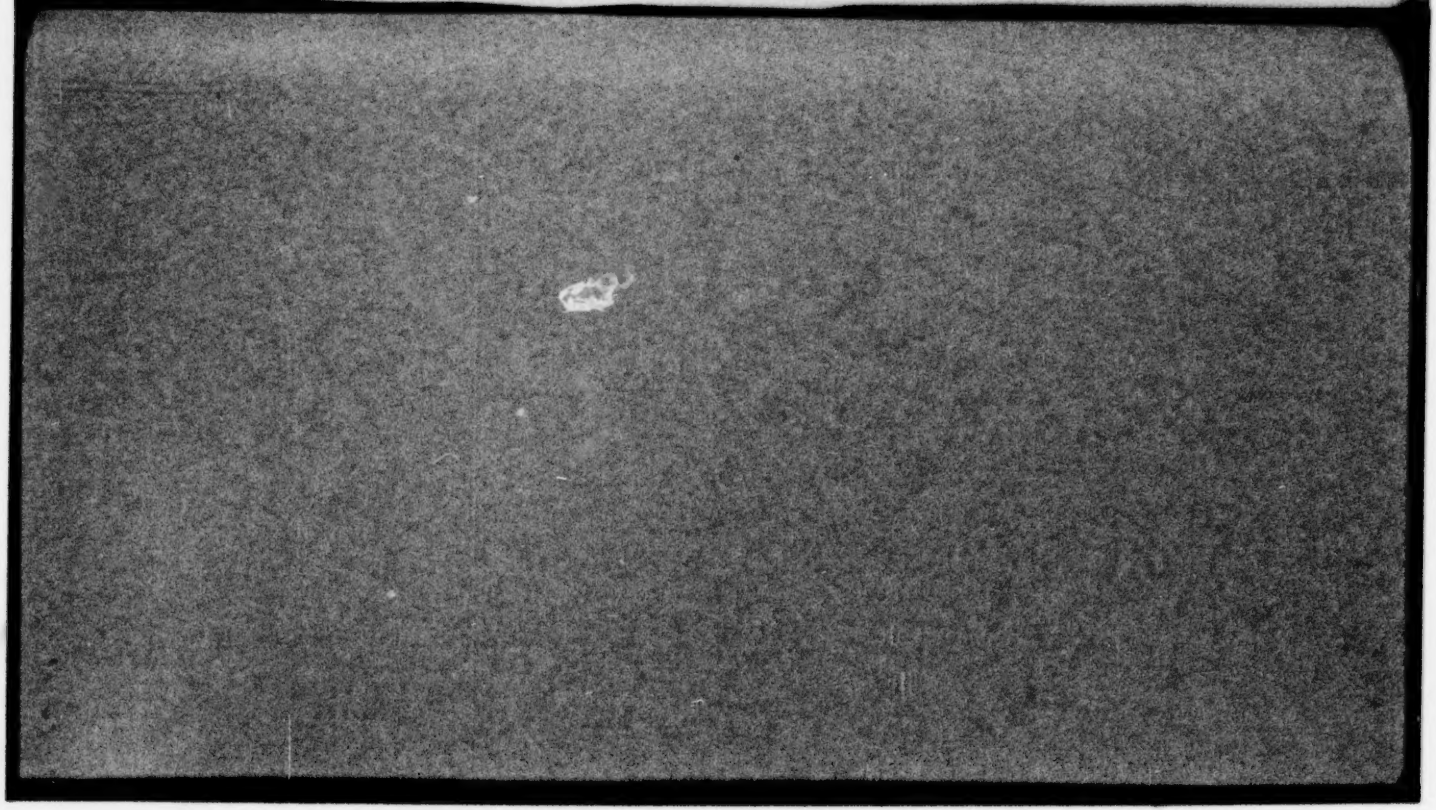
No. [redacted] 293

U. SHERMAN JONES, PETITIONER,

v.

WILLIAM M. PATTERSON, DOROTH A. McFARLAND, [redacted] PATTERSON, SHIRLEY A. PATTERSON, ET AL., ETC.

[redacted]



(31,704)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 981

U. SHERMAN JOINES, PETITIONER,

vs.

WILLIAM M. PATTERSON, DOROTH A. McFARLAND, NÉE PATTERSON, SHELBY A. PATTERSON, ET AL., ETC.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA

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TRANSCRIPT OF RECORD

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

Filed in Supreme Court of Oklahoma Nov. 5, 1921. Wm. M. Franklin, Clerk.

W. M. Patterson et al., Plaintiffs, vs. U. S. Joines, Defendant. No. 12,797.

PETITION IN ERROR.

The said plaintiffs in error, W. M. Patterson, Doroth A. McFarland, *nee* Patterson, Shelby A. Patterson, Howell M. Patterson, J. Allen Patterson and Ruby E. Patterson, complain of said defendant in error, U. S. Joines, for that the said U. S. Joines, at the May, 1921, term of the District Court of Murray County, State of Oklahoma, recovered a judgment of said court against the said W. M. Patterson, Doroth A. McFarland, *nee* Patterson, Shelby A. Patterson, Howell M. Patterson, J. Allen Patterson and Ruby E. Patterson, in a certain action then pending in said court, wherein the said W. M. Patterson, Doroth A. McFarland, *nee* Patterson, Shelby A. Patterson, Howell M. Patterson, J. Allen Patterson and Ruby E. Patterson were plaintiffs, and the said U. S. Joines was defendant. The original case-made, duly certified and attested, is hereto attached, marked Exhibit "A" and made a part of this petition in error; and the said W. M. Patterson, Doroth A. McFarland, *nee* Patterson, Shelby A. Patterson, Howell M. Patterson, J. Allen

Patterson and Ruby E. Patterson aver that there is error in the said record and proceedings in this, to wit:

(1) Said court erred in overruling the motion of plaintiff in error for new trial.

(2) Said court erred in not rendering judgment for the plaintiffs in error on the agreed statement of facts in said cause.

(3) Said court erred in not rendering judgment for the plaintiffs in error on the pleadings and agreed statement of facts.

(4) The court erred in rendering judgment for the defendant in error because under the agreed statement of facts and the law the plaintiffs were entitled to recover.

(5) The court erred in his judgment, because the same was against the evidence and the law.

(6) The court should have found in favor of the plaintiff, because under the evidence and the law the plaintiffs were entitled to recover.

Wherefore, plaintiffs in error pray that said judgment, so rendered, may be reversed, set aside and held for naught, and that a judgment may be rendered in favor of the plaintiffs in error and against the defendant in error upon the agreed statement of facts in said cause, and that the plaintiffs in error be restored to all rights that they have lost by the rendition of such judgment, and for such other relief as to the Court may seem just.

Hayes & McIntosh,
Hatchett & Semple,

Attorneys for Plaintiffs.

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA.

W. M. Patterson et al., Plaintiffs in Error, vs. U. S. Joines, Defendant in Error. No. 12,797.

Filed Oct. 1, 1921. Edna Swearengin, Court Clerk, Murray County, Okla. By ....., Deputy.

Filed in Supreme Court of Oklahoma, Nov. 5, 1921. William M. Franklin, Clerk.

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EXHIBIT "A" TO THE PETITION IN ERROR

CASE-MADE.

In the Supreme Court of the State of Oklahoma.

W. M. Patterson et al., Plaintiff in Error, vs. U. S. Joines, Defendant in Error.

Appeal from the District Court Murray County.

Filed in Supreme Court of Oklahoma Nov. 5, 1921. William M. Franklin, Clerk.

Appearances:

Hayes & McIntosh, for plaintiff in error.
Wm. G. Davisson, for defendant in error.

STATEMENT

Of the filing of a petition.

Be it Remembered, That heretofore and on, to wit: the 21st day of February, 1920, the plaintiff in error herein (W. M. Patterson et al.), commenced an action against the defendant in error herein (U. S. Joines) by filing a petition in the office of the court clerk of Murray County, Oklahoma, which said petition is in the words and figures following, to wit:

In the District Court of Murray County, State of Oklahoma.

W. M. Patterson, Doroth A. McFarland, *nee* Patterson, and Shelby A. Patterson and Howell M. Patterson, a minor; J. Allen Patterson, a minor, and Ruby E. Patterson, a minor, by their next friend, W. M. Patterson, Plaintiffs, vs. U. S. Joines, defendant.—No. 1842.

PETITION.

Comes now the said plaintiffs, W. M. Patterson, Doroth A. McFarland, *nee* Patterson, and Shelby A. Patterson, and Howell M. Patterson, a minor; J. Allen Patterson, a minor, and Ruby E. Patterson, a minor, by their next friend, W. M. Patterson, and show the court that the defendant, U. S. Joines, is a resident of Carter County, State of Oklahoma; and for cause of action against said defendant allege and state:

1. That said plaintiffs are the owners of the title in fee simple to and are entitled to the immediate possession of the following described real property and premises, to wit:

E. ½ of the N. E. ¼ and the E. ½ of the W. ½ of N. E. ¼ and N. W. ¼ of S. W. ¼ of N. E. ¼ and W. ½ of N. W. ¼ of N. E. ¼, and the N. ½ of N. W. ¼ and the N. E. ¼ of S. E. ¼ of Section 31, Township 1 South, Range 1 West, and also the W. ½ of N. W. ¼ of S. E. ¼ of Section 8, Township 2 South, Range 1 West, containing 280 acres, more or less, according to the United States Survey thereof, located and situated in Murray County, State of Oklahoma.

And

The W. ½ of the N. E. ¼ of the N. E. ¼ of Section 27, Township 2 South, Range 6 West, con-

taining 20 acres, more or less, according to the United States Survey thereof, located and situated in Stephens County, State of Oklahoma.

And

The N. ½ of the N. W. ¼ of the N. E. ¼ and the S. W. ¼ of the N. W. ¼ of N. E. ¼ and the S. E. ¼ of S. E. ¼ of Section 12, Township 2 South, Range 2 West of the Indian Base Meridian, located and situated in Carter County, State of Oklahoma, containing 70 acres, more or less, according to the United States Survey thereof.

2. That said defendant is in the possession of and has under his control the possession of said lands and premises hereinabove described, and has had the possession of said lands and premises at all times since the 5th day of July, 1907, and that said plaintiffs have been unlawfully denied the possession, the use and occupancy of said lands and premises since July 5th, 1907.

3. That the title of plaintiffs was acquired in the following manner, to wit: that the above described real property and premises were patented to Emma Patterson, a Mississippi Choctaw Indian of one-eighth blood; that the said Emma Patterson died intestate in what is now Bryan County, State of Oklahoma, in the year 1906; that at the time of the death of Emma Patterson she left surviving her, as her only heirs, her husband, W. M. Patterson, and her children, Doroth A. Patterson, nee McFarland, Shelby A. Patterson, and Howell M. Patterson, J. Allen Patterson and Ruby E. Patterson; that the said W. M. Patterson is the owner of a life estate in and to the above described real property and premises; that the said Doroth A. McFarland, nee Patterson, Shelby A. Patterson, Howell M. Patterson, J. Allen Patterson and Ruby E. Patterson are the owners of the fee simple title in and to said lands and premises, subject to the life estate of W. M. Patterson.

4. That the said defendant has been in the unlawful possession of said lands and premises herein described for the period of twelve years; that the reasonable value of said land and premises per year for said period of time is the sum of five hundred ($500.00) dollars per year, or the total sum of six thousand ($6,000) dollars; that said plaintiffs have been damaged in the sum of six thousand ($6,000.00) dollars by said defendant unlawfully withholding possession of said lands and premises from said plaintiffs for said period of time.

5. That said defendant claims some right, title or interest in and to said described real property adverse to these plaintiffs, which constitutes a cloud on the title of said plaintiffs.

Wherefore, premises considered, plaintiffs pray that the defendant, U. S. Joines, be notified of this suit, and that upon a hearing hereof that said plaintiffs have judgment against said defendant, adjudging that said plaintiffs are the owners of the legal and equitable title in fee simple in and to said afore-described premises, free and clear of all liens, claims and incumbrances; that the defendant has no right, title or interest therein, and that he be barred and enjoined from asserting any right, claim or interest thereon; that the title of plaintiffs be quieted and confirmed, and that plaintiffs have judgment against said defendant for the sum of six thousand ($6,000.00) dollars for the rents and profits on said lands and for cost of suit, and all other equitable relief.

Hayes & McIntosh,
Attorneys for Plaintiffs.

(Upon the back of which appears the following filing endorsement, to wit):

"Filed in office of court clerk of Murray County, Okla., Feb. 21, 1920. Eva Vance, Court Clerk. By Will V. Isaac, Deputy."

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA.

W. M. Patterson et al., Plaintiffs in Error, vs. U. S. Joines, Defendant in Error. —No. 12,797.

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STATEMENT

Of the filing of the Praecipe, Issuance of Summons, etc.

That on the same day a praecipe for summons was filed in the office of the court clerk of Murray County, Oklahoma.

That thereafter a summons was issued, directed to the proper officer, commanding him to summon the defendant herein.

That thereafter, and in the proper time and in the proper manner, said summons was duly served and due return made thereof.

STATEMENT

Of the filing of a demurrer by the defendant to the plaintiffs' petition.

Be it Remembered: That heretofore, and on to wit: the 28th day of Feb., 1920, the defendant filed a demurrer to the petition of plaintiffs, which said demurrer is in words and figures as follows, to wit:

IN THE DISTRICT COURT OF MURRAY COUNTY, STATE OF OKLAHOMA.

W. M. Patterson, Doroth A. McFarland, nee Patterson, Shelby A. Patterson, Howell M. Patterson, a minor; J. Allen Patterson, a minor, and Ruby E. Patterson, a minor, by their next friend, W. M. Patterson, plaintiffs, vs. U. S. Joines, defendant. No. 1,842.

DEMURRER.

Comes now the defendant, U. S. Joines, and demurs to the petition of the plaintiffs filed herein, and for reason states that the same does not state facts sufficient to constitute a cause of action against this defendant and in favor of the said plaintiffs.

Wm. G. Davisson,
Attorney for Defendant.

(Upon the back of which appears the following filing endorsement, to wit):

Filed, Murray County, Okla., Feb. 28, 1920. Eva Vance, Court Clerk.

STATEMENT

Of the filing of an order of the court overruling demurrer of defendant to the petition of plaintiffs.

Order of the court overruling demurrer of defendant to the petition of plaintiffs, which said order is as follows, to wit:

State of Oklahoma, County of Murray, ss. In the District Court.

W. M. Patterson, plaintiff, vs. U. S. Joines, defendant. No. 1,842.

ORDER OVERRULING DEMURRER.

Now on this 9th day of August, 1920, being a regular court day of the above styled court, comes on for hearing defendant's demurrer to plaintiff's petition, both parties being represented by their attorneys of record:

Whereupon, the court having heard the argument of counsel and being fully advised in the premises, is of the opinion that said demurrer should be overruled, which is accordingly done. To which ruling of the court the defendant at the time excepts, and which exception is by the court allowed.

It is further ordered that defendant be given twenty days in which to file his answer in this cause.

T. B. Swank, Judge.

(Upon the back appears the following filing endorsement, to wit):

Filed in Murray County, Okla., Aug. 16, 1920. Eva Vance, Court Clerk.

STATEMENT

Of the filing of an answer.

That thereafter, and on, to wit: the 9th day of Au-

gust, 1920, the defendant filed answer to the petition herein, which said answer is in words and figures following, to wit:

State of Oklahoma, County of Murray, ss. In the District Court.

W. M. Patterson et al., plaintiffs, vs. U. S. Joines, defendant. No. 1,842.

ANSWER.

Comes now the defendant and for answer to the petition of the plaintiff herein filed, denies both generally and specifically each and every material allegation therein contained except such as are herein admitted.

This defendant specifically denies that the said plaintiffs or any or either of them are the owners of the lands described in plaintiffs' petition, or have the right to the possession thereof.

This defendant admits that he is in possession of said lands and premises, and that he has been in possession thereof at all times since on or about the month of October, 1907.

Defendant further admits that the lands involved in this action were allotted to one Emma Patterson, a one-eighth blood Mississippi Choctaw Indian; that she died intestate in what was then the Central District of Indian Territory, on or about the 14th day of May, 1906, and that at the time of her death she left surviving her Wm. M. Patterson, her husband, and Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, J. Allen Patterson and Ruby Elnora Patterson, her children.

This defendant denies that the said Wm. M. Patterson, husband of the said Emma Patterson aforesaid, was one of the heirs of the said Emma Patterson, as in said petition charged, or that he was entitled to a life estate in said lands.

He denies that $500.00 per annum was the reasonable rental value of said lands; denies that he has wrongfully detained the said lands from the said plaintiffs, or any or either of them, and denies that they, or either of them, are entitled to recover the sum of $6,000.00 or any other sum as damages.

This defendant admits that the children above named are the heirs of the said Emma Patterson.

Further answering, this defendant says that the lands described in plaintiffs' petition were filed after the death of the said Emma Patterson, by the aforesaid Wm. M. Patterson, her husband, as administrator of her estate, and that subsequent thereto, and between the date of the death of the said Emma Patterson and the 24th day of April, 1907, the said Wm. M. Patterson was appointed guardian of the children above named, all of whom were minors; and that thereafter, and, to wit: on or about the 5th day of October, 1907, after due and legal probate proceedings, duly and regularly had, the said guardian sold and conveyed the said lands to this defendant, and that a copy of said deed of conveyance is hereto attached, marked "Exhibit A," and made part of this answer.

That said defendant has ever since said date been in possession of said lands, and that thereafter, and, to wit: on or about the 5th day of August, 1913, in order to correct certain errors of description in said former deed, a subsequent deed was executed by the said Wm. M. Patterson aforesaid, in favor of this defendant. A copy of said deed is hereto attached, marked "Exhibit B," and made part hereof.

That said conveyances were duly ordered and regularly approved by the probate court having jurisdiction of the said estate, and were in all things sufficient to, and did, convey all of the title of the said heirs of Emma Patterson to this defendant.

Further answering, and by way of estoppel, this

defendant specially pleads that the plaintiff, Wm. M. Patterson, held himself out as guardian of the said minor children aforesaid, and represented to this plaintiff that the said children were the sole heirs of the said Emma Patterson, deceased, and had all of the right, title and interest in her said lands; and that by reason thereof he is now estopped from setting up and claiming any interest in or to the same.

Further specially pleading, this defendant says that if the said plaintiff, Wm. M. Patterson, ever had any right to the lands, and the proceeds accruing from said lands by reason of his alleged life estate therein, that the said action is now barred as to all except the last two years thereof, by the Oklahoma Statute of Limitations, to wit: Section 4655 of the Revised Laws of the State of Oklahoma of 1910.

Further answering, this defendant says that if the said Wm. M. Patterson ever had any right to a courtesy interest in the estate of the said Emma Patterson as against this defendant, that it is now barred by the Arkansas Statute of Limitations in effect in Indian Territory at the time of the said sale, to wit, Section .... of Mansfield's Digest of the Laws of Arkansas.

Further answering, defendant says that plaintiffs' action herein constitutes a collateral attack on the orders and judgment of the probate court in the guardianship sale, under which this defendant claims, and by reason thereof cannot be maintained.

Wherefore, these premises considered, defendant prays that plaintiffs' petition be denied; that they take nothing by reason of their action aforesaid, and that this defendant have judgment for his costs in this behalf expended.

Wm. G. Davisson,
Attorney for Defendant.

State of Oklahoma, County of Carter, ss:

U. S. Joines, being first duly sworn, says that he is the defendant in the above styled cause; that he has read the foregoing answer and knows the contents thereof, and that the matters and things therein stated are true.

U. S. Joines.

Subscribed and sworn to before me this 30th day of March, 1920.

Eva Vance, Court Clerk.
(Seal) By Mable Berridge, Deputy.

GUARDIAN'S DEED.

United States of America, Southern District, Indian Territory, ss:

Now, whereas, William M. Patterson was, on the 27th day of March, A. D. 1907, appointed guardian of the persons and estate of his minor children, Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson and Ruby Elnora Patterson, by the United States Court in the Indian Territory, Central District, at Durant; and has duly qualified as such guardian of said minors, and is now and has been at all times subsequent to said date aforesaid, the guardian of the persons and estates of said children.

And, whereas, the said Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson and Ruby Elnora Patterson have heretofore inherited the hereinafter mentioned and described lands and tenements from their deceased mother, who died on the 14th day of May, 1906, said children being the sole and exclusive heirs thereof.

And, whereas, the said William M. Patterson, as the guardian aforesaid of the said minor children, did, on the 24th day of April, 1907, file a written petition in the

United States Court in the Indian Territory, Southern District at Ardmore, duly verified, praying for an order of court authorizing and directing a sale of said minors' interest in said lands hereinafter set forth and described for the education, maintenance and support of said minors, the improvement of their estates and for investment purposes, said lands and tenements being situated within said court's jurisdiction:

And, whereas, the said United States Court in the Southern District of the Indian Territory at Ardmore, acting on said petition did, on the 2nd day of May, A. D. 1907, authorize, order and direct the said William M. Patterson, as guardian aforesaid of the said children, to sell and convey said children's right, title and interest in and to the said lands and tenements at public outcry, on a credit of three months, on the fifth day of July, 1907, between the hours of ten o'clock forenoon and four o'clock afternoon, in front of the building in the City of Ardmore, Indian Territory, in which United States Court is held.

And, whereas, the said William M. Patterson, as guardian aforesaid, did, in compliance with and in obedience to said order of court, more than twenty days before the fifth day of July, 1907, post written notices of said sale in ten of the most public places in the 21st Recording District of the Southern District of the Indian Territory, giving therein a particular description of said lands and tenements, the time, place and terms of sale as stated in the said order.

And, whereas, D. E. Booker, Guy T. Ledbetter and Will H. Wimberly, who had theretofore in said order aforesaid been appointed by said court to appraise said children's interest in said lands and tenements, did, on the 18th day of June, 1907, take the prescribed oath required in this matter, then viewed the said premises, and then did in writing appraise, under their oath, the right,

title and interest of said minor children in said lands and tenements to be two thousand one hundred dollars ($2,100.00).

And, whereas, the said William M. Patterson, as guardian of the aforesaid children, did, on the fifth day of July, 1907, between the hours of ten o'clock forenoon and four o'clock afternoon, in front of the building in the City of Ardmore, Indian Territory, in which United States Court is held, offer for sale all the right, title and interest of said children in and to the aforesaid lands and tenements hereinafter described, at public outcry to the highest bidder on a credit of three months.

And, whereas, at said time, place and sale U. S. Joines of Ardmore, Indian Territory, bid two thousand ($2,000.00) dollars therefor, which was the highest and best bid then and there offered and made; and the same being more than three-fourths of the said appraised value thereof, was then and there accepted by the said William M. Patterson as such guardian aforesaid, and the same having now been paid.

Therefore, be it known to all men by these presents, that I, William M. Patterson, as the guardian of the persons and estates of Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson and Ruby Elnora Patterson, and of each of them, minors, in consideration of the premises aforesaid and by virtue of my power and authority as guardian of said minors and their estates as aforesaid, and for and in consideration of the said sum of two thousand ($2,000.00) dollars cash in hand paid me by the said U. S. Joines, the receipt of which is hereby acknowledged, have granted, bargained, sold and conveyed, and do by these presents hereby grant, bargain, sell and convey unto the said U. S. Joines, his heirs and assigns, all the right, title and interest of the said Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson and Ruby Elnora Patterson, and of each of them, in and

to the following described lands and tenements situated in the Southern District of the Indian Territory, to wit:

The north half of the northwest quarter, the north half of the northeast quarter, the southeast quarter of the northeast quarter, the northeast quarter of the southeast quarter, the east half of the southwest quarter of the northeast quarter, and the northwest quarter of the southwest quarter of the northeast quarter of section thirty-one, township one south, range one west.

Also the south half of the southeast quarter of the southeast quarter, the south half of the southwest quarter of the southeast quarter, the northwest quarter of the southwest quarter of the southeast quarter, and the southeast quarter of the southeast quarter of the southwest quarter of section seventeen, township one south, range one east.

Also the west half of the northwest quarter of the southeast quarter of section eight, township two south, range one west.

Also the northwest quarter of the northwest quarter of the northeast quarter of section twenty, township one south, range one east.

Also the southeast quarter of the southeast quarter, the north half of the northwest quarter of the northeast quarter, and the southwest quarter of the northwest quarter of the northeast quarter of section twelve, township two south, range two east, the same being the identical lands petitioned to be sold, ordered to be sold, appraised and notices of sale posted, and sold, as aforesaid.

Together with, and including all the rights, privileges, appurtenances and improvements situated thereon, connected therewith, or in anywise appertaining thereunto.

To have and to hold the same unto the said U. S.

Joines, his heirs and assigns, in quiet and peaceable possession and in fee simple, forever.

Witness my hand and signature as such guardian of said minor children this the 5th day of October, 1907.

W. M. Patterson,

As the guardian of Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson and Ruby Elnora Patterson, as aforesaid.

"Exhibit A."

GUARDIAN'S DEED.

United States of America, State of Oklahoma, County of Bryan, ss:

Now, whereas, William M. Patterson was, on the 27th day of March, A. D. 1907, appointed guardian of the persons and estates of his minor children, Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson and Ruby Elnora Patterson, by the United States Court in the Indian Territory, Central District at Durant, and has duly qualified as such guardian of said minors, and is now and has been at all times subsequent to said date aforesaid, the guardian of the persons and estates of said children, and;

Whereas, the said Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson and Ruby Elnora Patterson have heretofore inherited the hereinafter mentioned and described lands and tenements from their deceased mother who died on the 14th day of May, 1906, said children being the sole and exclusive heirs thereof; and,

Whereas, the said William M. Patterson, as the guardian aforesaid of the said minor children, did on the

24th day of April, 1907, after having previously given due, legal and timely notice of his intention to make application therefor, file a written petition in the United States Court in the Indian Territory, Southern District at Ardmore, duly verified, praying for an order of court authorizing and directing a sale of said minors' interest in said lands hereinafter set forth and described, for the education, maintenance and support of said minors, the improvements of their estates and for investment purposes, said lands and tenements being situated within said court's jurisdiction; and,

Whereas, the said United States Court, in the Southern District of the Indian Territory, at Ardmore, acting on said petition, did on the 2nd day of May, A. D. 1907, authorize, order and direct the said William M. Patterson, as guardian aforesaid of the said children, to sell and convey said children's right, title and interest in and to the said lands and tenements, at public outcry, on a credit of three months, on the fifth day of July, 1907, between the hours of ten o'clock forenoon and four o'clock afternoon, in front of the building in the City of Ardmore, Indian Territory, in which United States Court is held; and,

Whereas, the said William M. Patterson, as guardian aforesaid, did in compliance with and in obedience to said order of court, more than twenty days before the *fifth* day of July, 1907, post written notices of said sale in ten of the most public places in the 21st Recording District of the Southern District of the Indian Territory, giving therein a particular description of said lands and tenements, of the time, place and terms of sale as stated in the said order; and,

Whereas, D. E. Booker, Guy T. Ledbetter and Will H. Wimberly, who had theretofore in said order aforesaid, been appointed by said court to appraise said children's interest in said lands and tenements, did on the 18th day of June, 1907, take the prescribed oath required

in this matter, then viewed the said premises and then did in writing appraise under their oath the right, title and interest of said minor children in said lands and tenements to be two thousand one hundred dollars ($2,100.00); and,

Whereas, the said William M. Patterson, as guardian of the aforesaid children, did on the fifth day of July, 1907, between the hours of ten o'clock forenoon and four o'clock afternoon, in front of the building in the City of Ardmore, Indian Territory, in which United States Court is held, offer for sale all the right, title and interest of said children in and to the aforesaid lands and tenements hereinafter described at public outcry to the highest bidder on a credit of three months; and,

Whereas, at said time, place and sale U. S. Jones of Ardmore, Indian Territory, bid two thousand ($2,000.00) dollars therefor, which was the highest and best bid then and there offered and made and the same being more than three-fourths of the said appraised value therefor, was then and there accepted by the said William M. Patterson, as such guardian aforesaid, and the same having now been paid; and,

Whereas, the said William M. Patterson, guardian as aforesaid, did on the 8th day of October, 1907, duly file his return herein showing that he had sold the said lands to the said U. S. Jones as aforesaid for the sum of two thousand ($2,000) dollars and showing all of his acts done under said order of sale, and asking that said sale be confirmed; and,

Whereas, the County Court of Carter County, State of Oklahoma, being the successor of the United States Court for the Southern District of the Indian Territory, sitting at Ardmore, and being authorized to do any and all things herein which the said United States Court for the Southern District of the Indian Territory sitting at Ardmore, could have done, did on the 14th day of July,

1913, make an order confirming said sale and directing conveyance to be executed by the said William M. Patterson, as guardian aforesaid, to the said U. S. Joines a certified copy of which order of confirmation was recorded in the office of the register of deeds of Carter County on the 19th day of July, 1913, in Book Misc. Records 15 at page 27 thereof, and also in the office of the register of deeds of Murray Co. on the 16th day of July, 1913, in Book Misc. Records 6 at p. 1, within which said two counties the said lands are situated and which said order of confirmation now on file and of record in said two counties and which said records thereof in said two register of deeds offices are hereby referred to and made a part of this indenture.

Now, therefore, the said William M. Patterson, as guardian of the said Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson and Ruby Elnora Patterson, minors as aforesaid, pursuant to the order last aforesaid of said County Court of Carter County, Oklahoma, and for and in consideration of the sum of two thousand dollars ($2,000.00) cash in hand paid by the said U. S. Joines to the said William M. Patterson, guardian as aforesaid, the receipt whereof is hereby acknowledged, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell and convey unto the said U. S. Joines, his heirs and assigns forever, all the right, title and interest and estate of the said Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson and Ruby Elnora Patterson, minors as aforesaid, in and to all the certain lots, pieces or parcels of land situated and lying and being in the said Counties of Carter and Murray in the State of Oklahoma, and bounded and particularly described as follows, to wit:

The north half of the northwest quarter, the north half of the northeast quarter, the southeast quarter of the northeast quarter, the northeast quarter of the south-

east quarter, the east half of the southwest quarter of the northeast quarter, and the northwest quarter of the southwest quarter of the northeast quarter of section thirty-one, township one south, range one west. Also west half of northwest quarter of southeast quarter of Section 8, Township 2 South, Range 1 West; also the south half of the southeast quarter of the southeast quarter, the south half of the southwest quarter of the southeast quarter, the northwest quarter of the southwest of the southeast quarter, and the southeast quarter of the southeast quarter of the southwest quarter of section seventeen, township one south, range one east; also the northwest quarter of the northwest quarter of the northeast quarter of section twenty, township one south, range one east; also the southeast quarter of the southeast quarter, the north half of the northwest quarter of the northeast quarter, and the southwest of the northwest quarter of the northeast quarter of section twelve, township two south, range two (2) west.

together with the tenements, herditaments and appurtenances whatsoever to the same belonging, or in anywise appertaining.

To have and to hold all and singular the above mentioned and described premises unto the said U. S. Joines, his heirs and assigns, forever.

In witness whereof, the said William M. Patterson, as guardian aforesaid, has hereunto set his hand this the 5th day of Aug., 1913.

W. M. Patterson,

As Guardian Aforesaid of said Minors.

Signed and delivered in the presence of E. P. Williams.

"Exhibit B."

(Upon the back of which appears the following filing endorsement, to wit):

"Filed in open court in the District Court of Murray County, Aug. 9, 1920. Eva Vance, Court Clerk."

Statement

Of the filing of reply of plaintiffs.

That thereafter, and on, to wit: Sept. 27, 1920, the plaintiffs filed a reply to the answer herein, which said reply is in words and figures following, to wit:

In the District Court of Murray County, State of Oklahoma:

W. M. Patterson et al., plaintiffs, vs. U. S. Joines, defendant. No. 1,842.

Reply of Plaintiffs.

Comes now the plaintiffs, W. M. Patterson, Doroth A. McFarland, nee Patterson, Shelby A. Patterson, Howell M. Patterson, a minor; J. Allen Patterson, a minor, and Ruby E. Patterson, a minor, by their next friend, W. M. Patterson, and replying to the answer of the defendant, U. S. Joines, filed herein denies each, every and all the material allegations contained in the answer of said defendant, except that part of said answer which admits certain allegations contained in the petition.

The plaintiffs further deny that on or about the 5th of October, *1917*, W. M. Patterson, as guardian of Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, J. Allen Patterson and Ruby E. Patterson, sold and conveyed the said lands sued for herein to this defendant by due and legal probate proceedings duly and regularly had; deny that the United States District Court of the the Southern District of Indian Territory at Ardmore

to sell the lands of said minors above named, but alleges that on or about the ..... day of April, 1907, the said W. M. Patterson, as guardian of the above named minors, filed his petition in the United States District Court for the Southern District of Indian Territory at Ardmore for the sale of the lands described in the petition herein, a copy of which petition is hereto attached, made a part hereof and marked Exhibit "A"; that thereafter on the 2nd day of May, 1907, said petition came on for hearing before the court and said lands were ordered sold by said guardian, a copy of which order of sale is hereto attached, made a part hereof and marked Exhibit "B"; that thereafter on the 8th day of October, 1907, the said W. M. Patterson filed in said court a purported report of sale of said lands, which said purported report of sale is hereto attached, made a part hereof and marked Exhibit "C"; that thereafter on the 14th day of July, 1913, the County Court of Carter County, State of Oklahoma, entered its pretended order confirming sale of real estate of the lands set out in the petition of the said U. S. Joines; that the said petition praying for an order of sale, the order of sale based thereon, the report of sale, are all void and of no force and effect for the reason that the United States District Court for the Southern District of Indian Territory was without authority of law to sell the lands belonging to minors, or any part thereof or interest therein, unless such sale was made in conjunction with adult heirs in the sale of inherited lands; that there was no adult heirs of the said Emma Patterson, the allottee of the lands sued for herein, joining in the sale by said minors; that the United States District Court had no jurisdiction to order the sale of said lands unless there were both adult and minor heirs of such decedent, and then only were the minors permitted, under the law to join in a sale of such lands by such guardian; that said purported sale by said guardian to the said defendant was never confirmed by any court until the 14th day of July, 1913; and that said purported

order of confirmation is void and of no force and effect and no title, based on said purported sale, was ever passed or conveyed to said defendant, a copy of said purported order confirming sale is hereto attached, made a part hereof and marked Exhibit "D."

Said plaintiffs further deny that the Arkansas Statutes of Limitation, in effect in Indian Territory at the time of the purported sale of said lands, is of any force or effect herein at this time; deny there has ever been any legal sale of said lands; deny that said defendant has any right, title, claim or interest in and to said lands by reason of any purported sale in probate court or otherwise.

Wherefore plaintiffs pray that they have judgment against said defendant as prayed for in the petition herein.

Hayes & McIntosh,

Attorneys for Plaintiffs.

In the United States Court in the Indian Territory, Southern District, Indian Territory, at Ardmore.

In the matter of the application of William M. Patterson, as guardian of Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson, Ruby Elnora Patterson, as their legal guardian, for an order of sale of the lands inherited by them from their deceased mother, Emma Patterson. Exhibit "A."

Petition and Complaint of Wm. M. Patterson, as Guardian of Indian Minors for the Sale of Inherited Lands, the Said Minors Being Indian Citizens.

Come now your petitioner, Wm. M. Patterson, as guardian of Doroth A. Patterson, Shelby A. Patterson,

Howell M. Patterson, Joseph Allen Patterson and Ruby Elnora Patterson, as their natural and legal guardian, and respectfully states that they are minor children, aged respectively 13, 10, 7, 3 and 1 years; and that they reside and live in the Central District of the Indian Territory, about seven miles northwest of the City of Durant, Indian Territory, and that the said William M. Patterson, their said father and legal guardian, resides at the same place and with them; and that the said William M. Patterson was duly and legally appointed and qualified in the United States Court in the Indian Territory, Central District aforesaid, at Durant, as their legal and lawful guardian, which appointment and qualification has been duly approved by the said court.

Petitioner states that same minors are the children of William M. Patterson by his wife, Emma Patterson, born to them in lawful wedlock, and that they are the only children of the said parents, by the said or any other marriage, and that they are the only heirs of the said Emma Patterson whatsoever.

He states further that they are citizens of the Choctaw Nation by blood being one-eighth Choctaw by blood and seven-eighths white, and that they have, except the two youngest ones, selected and taken in severalty their allotments of the Choctaws and Chickasaws; that their said mother, Emma Patterson, was, at the time of and prior to her death, which occurred on the 14th day of May, 1906, a citizen of said Choctaw Nation by blood, and that she was at the time of her said death entitled to take and select an allotment as aforesaid, and that her husband, the said William M. Patterson, who, on the ____ day of March, 1907, was duly appointed and qualified in said court at Durant, Indian Territory, as administrator of said estate of said Emma Patterson, selected and took in allotment and filed upon in her name, the following described lands located and situated in the Southern District of the Indian Territory, which are

wild, rocky, uninclosed mountain lands, the same being situated within the jurisdiction of this honorable court, to wit:

The north half of the northwest quarter of Section 31, Township 1 South, Range 1 West; also the north half of the northeast quarter of same section, township and range; also the southeast quarter of the northeast quarter of same section, township and range; also the northeast quarter of the southeast quarter of same section, township and range; also the east half of the southwest quarter of the northeast quarter of same section, township and range; also the northwest quarter of the southwest quarter of the northeast quarter of same section, township and range; also the west half of the northwest quarter of the southeast quarter of section eight, township two south, range one west; also the south half of the southeast quarter of the southeast quarter of section seventeen, township one south, range one east; also the south half of the southwest quarter of the southeast quarter of the same section, township and range; also the northwest quarter of the southwest quarter of the southeast quarter of same section, township and range; also the southeast quarter of the southeast quarter of the southwest quarter of same section, township and range; also the northwest quarter of the northwest quarter of the northeast quarter of section twenty, township one south, range one east; also the southeast quarter of the southeast quarter of section twelve, township two south, range two west; also the north half of the northwest quarter of the northeast quarter of same section, township and range; also the southwest quarter of the northwest quarter of the northeast quarter of same section, township and range.

Petitioner further states that said minors are the sole and only heirs of their said mother, Emma Patterson, and that they have inherited the above described lands in fee simple from her; that they, and each of

In the United States Court in the Indian Territory, Southern District, at Ardmore.

In the matter of the petition of William M. Patterson, as the guardian of Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson, Ruby Elnora Patterson, for an order for the sale of lands inherited by said minors from their deceased mother, Emma Patterson. Exhibit "B."

ORDER OF COURT GRANTING THE PETITION FOR SALE OF INHERITED INDIAN LANDS.

This cause coming on to be heard in open court on this the 2nd day of *May*, 1907, on the petition filed herein by William M. Patterson, as the legal guardian of Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson and Ruby Elnora Patterson, minors, asking for an order of court for the sale of the hereinafter mentioned lands and premises which are alleged to have been inherited by said minors from their deceased mother, Emma Patterson, and it appearing to the court that the said William M. Patterson is the legal guardian of said minors; that they are the owners of the lands hereinafter mentioned and set forth, having inherited the same from their mother, Emma Patterson, deceased; that the said Emma Patterson and the same minors are citizens of the Choctaw Nation by blood, not full blood, but of mixed blood, and that the hereinafter mentioned lands and premises have heretofore been allotted to their said mother, Emma Patterson, as her allotment of same; that the said minors have no personal property, but only their allotments and said lands so inherited, and that all of said lands are wild and uncultivated and non-revenue producing; that said children should be educated and their maintenance provided for and their lands made revenue producing; that their said father, William M. Patterson, is practically insolvent, and unable to properly provide out of his own funds for their education and maintenance, or to improve their

lands so as to make the same revenue producing; that it would be for the best interest of said minors that the said lands be sold and the funds derived therefrom be applied to their education, maintenance, improvements of their other lands and for investment in a way to produce an income and revenue; that all of said matters have heretofore been passed upon by the clerk of this court under directions of the court, and that said clerk has reported in writing that said lands should be so sold, and that the order prayed for should be granted.

And the court being fully advised in the premises having reached the same conclusion;

It is, therefore, ordered and decreed by the court that the said William M. Patterson, as the guardian of said minors aforesaid, shall sell and convey all of said minors' interest in and to the following described tracts and parcels of land located and situated in the Southern District of the Indian Territory as follows, to wit:

The north half of the northwest quarter of Section 31, Township 1 South, Range 1 West; also the north half of the northeast quarter of same section, township and range; also the southeast quarter of the northeast quarter of same section, township and range; also the northeast quarter of the southeast quarter of same section, township and range; also the east half of the southwest quarter of the northeast quarter of same section, township and range; also the northwest quarter of the southwest quarter of the northeast quarter of the same section, township and range; also the west half of the northwest quarter of the southeast quarter of section eight, township two south, range one west; also the south half of the southeast quarter of southeast quarter of section seventeen, township one south, range one east; also the south half of the southwest quarter of the southeast quarter of same section, township and range; also the northwest quarter of the southwest quarter of the southeast quarter of same section, township and range; also south-

east quarter of the southeast quarter of the southwest quarter of same section, township and range; also the northwest quarter of the northwest quarter of the northeast quarter of section twenty, township one south and range one east; also the southeast quarter of the southeast quarter of section twelve, township two south, range two west; also the north half of the northwest quarter of the northwest quarter of same section, township and range; also the southwest quarter of the northwest quarter of the northeast quarter of same section, township and range; the same being the identical lands set forth in said petition.

That the sale of same shall be, in all things, conducted in accordance with law and the order of this court; that D. E. Booker, Guy T. Ledbetter and W. H. Wimberly, who are disinterested persons, are hereby appointed appraisers, and they shall take the oath prescribed by law and conform in the appraisement, after viewing the said lands, as provided for by law; that the said William M. Patterson, as guardian, shall put up, or cause to be put up, notices of said sale at least twenty days before the date of sale thereof at ten of the most public places in the 21st recording district of the Southern District of the Indian Territory, particularly describing therein the lands to be sold, the time and place of sale and terms thereof; that said sale shall be in a 3 months credit and shall take place in front of the building in the City of Ardmore, Indian Territory, in which United States Court is held; and said sale shall be at public outcry to the highest bidder, between the hours of ten o'clock forenoon and four o'clock afternoon, July 5th, 1907.

It is further ordered that the said guardian shall execute a good and sufficient bond with not less than two sureties, to be approved by the clerk of this court, in double the sums the lands shall be appraised at, to conduct the sale with fidelity to the interest of his wards, and

faithfully to account for the proceeds of the sale according to law and as the order of this court may require.

In the United States Court in the Indian Territory, Southern District at Ardmore.

In the matter of the petition of William M. Patterson as the guardian of the person and estates of Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson and Ruby Elnora Patterson, minors. Exhibit "C."

REPORT OF SALE MADE BY GUARDIAN.

Comes now petitioner, William M. Patterson, as the legal guardian of the persons and estates of Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson and Ruby Elnora Patterson, and reports to this Honorable Court that he, in obedience to the orders of this court made and entered on the 2nd day of May, A. D. 1907, wherein and whereby petitioner was authorized, ordered and directed to sell at public outcry to the highest bidder on a credit of three months, on July 5th, 1907, between the hours of ten o'clock forenoon and four o'clock afternoon, in front of the court house building in the City of Ardmore, Indian Territory, the following described lands and tenements situated in the Southern District of the Indian Territory, to wit:

The north half of the northwest quarter, the north half of the northeast quarter, the southeast quarter of the northeast quarter, the northeast quarter of the southeast quarter, the east half of the southwest quarter of the northeast quarter, the northwest quarter of the southwest quarter of the northeast quarter of section thirty one, township one south, range one west; also the south half of the southeast quarter of the southeast quarter of the southeast quarter, the south half of the southwest quarter of the southeast quarter, the northwest quarter of the southwest quarter of the southeast quar-

ter, and the southeast quarter of the southeast quarter of the southwest quarter of section seventeen, township one south, range one east; also the west half of the northwest quarter of the southeast quarter of section eight, township two south, range one west; also the northwest quarter of the northwest quarter of the northeast quarter of section twenty, township one south, range one east; also the southeast quarter of the southeast quarter, the north half of the northwest quarter of the northeast quarter, and the southwest quarter of the northwest quarter of the northeast quarter of section twelve, township two south, range two west.

Your petitioner duly advertised and published the said sale by posting written notices thereof in ten of the most public places in the twenty-first recording district, Southern District, Indian Territory, for more than twenty days continuously before the said date of sale, July 5th, 1907, wherein a particular description of the lands and tenements to be sold was given, the time, place and terms of sale, in which said notices it was stated that the interest to be sold was the interest of the said children therein, which was stated to be the fee simple title thereof, which was in no wise incumbered whatsoever. Prior to the said date of sale, to wit: On the 18th day of June, 1907, D. E. Booker, Guy T. Lellsetter and Will H. Wimberly, who had theretofore been appointed appraisers by this court to appraise said lands and tenements, took the prescribed oath required in such cases, then viewed the said lands and premises, and thereafterwards appraised the same, and made and submitted a written report of their appraisement, which report is hereto attached and made a part hereof. They appraised the said lands and tenements to be two thousand one hundred dollars ($2,100.00), all of which was appraised as the interest of said minor wards mentioned hereinbefore. On the day of sale prescribed by said order; that is, on the fifth day of July, 1907, your petitioner offered the in-

terest of said minors in said lands and tenements for sale at public outcry to the highest bidder on a credit of three months in front of the building in which the United States Court is held in the City of Ardmore, Indian Territory, between the hours of ten o'clock forenoon and four o'clock afternoon. At said time, place and sale, U. S. Joines bid for same the sum of $2,000.00, which said bid of said U. S. Joines for said amount, $2,000.00 being the highest and best bid was then and there accepted by petitioner.

The bid so made for same by said U. S. Joines, and so accepted by your petitioner, was, in the opinion of your petitioner, equal to the full value of the interests of said minors in said lands and premises, that is, to the value of the fee simple title thereof, free and unincumbered in anywise whatever.

Your petitioner further states that he endeavored, in all proper and legitimate ways, to cause the said lands and tenements to sell for the highest price possible; that he neither omitted, neglected or left undone anything he could do to further the interests of his said wards in said sale; that the lands, having brought their full value, your petitioner suggests that the said sale should be approved and confirmed, and he so asks.

Your petitioner further states that he has executed and delivered to the said U. S. Joines a deed conveying to him the interests of his said wards in said lands and tenements, a copy of which is hereto attached and made a part hereof; and he asks that said deed be approved and confirmed, so as to vest in said U. S. Joines all the right, title and interest of his wards in said lands and tenements in accordance with the said sale aforesaid.

Petitioner further states that he was not the purchaser of said ward's interest in said lands and tenements, or of any part thereof, and that they

were not purchased for his use or benefit, and that he is not in any way whatever interested in the purchase thereof.

W. M. Patterson,

As the Guardian of the Persons and Estates of Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson, and Ruby Elnora Patterson, Minors.

Subscribed and sworn to before me this the 5th day of October, 1907.

(Seal.)

S. H. Kyle,
Notary Public.

Filed Oct. 8, 1907, C. M. Campbell, Clerk.

State of Oklahoma, Carter County, ss. In county Court.

In the Matter of the Estate of Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson, and Ruby Elnora Patterson, Minors. Exhibit "D."

ORDER CONFIRMING SALE OF REAL ESTATE BY GUARDIAN.

Now, on this 14th day of July, 1913, there coming on for hearing the return of sale made by William M. Patterson, as the guardian of the estate of Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson, and Ruby Elnora Patterson, Thos. Norman as attorney for said guardian, and no one appearing to object to the confirmation of the sale made by said guardian, nor any motion or objection there to be filed herein by any one, the order of said sale having been made on the 2nd day of May, 1907, by the United States Court in and for the Southern District of the Indian Territory sitting at Ardmore therein, within the limits of which is now Carter County, Oklahoma, which

said return was filed herein Oct. 8, 1907, and the Court having examined said return, and having heard and considered the evidence of witnesses offered in support of said return, it being the successor of the said United States Court in the Indian Territory sitting at Ardmore therein for the purpose hereof and being fully advised in the premises finds:

That in pursuance of said Order of Sale, said William M. Patterson as such guardian on the 5th day of July, 1907, sold the portion of real estate of said estate described as follows, to wit:

The north half of the northwest quarter, the north half of the northeast quarter, the southeast quarter of the northeast quarter, the northeast quarter of the Southeast quarter, the east half of the southwest quarter of the northeast quarter and the northwest quarter of the southwest quarter of the northeast quarter of the southwest quarter of the northeast quarter of Section thirty-one, township one south, range one west, also the south half of the southeast quarter of the southeast quarter, the south half of the southwest quarter of the southeast quarter, the northwest quarter of the southwest quarter of the southeast quarter, and the southeast quarter of the southeast quarter of the southwest quarter of Section seventeen, township one south, range one east. Also the west half of the northwest quarter of the southeast quarter of section eight, township two south, range one west. Also the northwest quarter of the northwest quarter of the northeast quarter of Section twenty, township one south, range one east. Also the southeast quarter of the southeast quarter; the north half of the northwest quarter of the northeast quarter and the southwest quarter of the northwest quarter of the northeast quarter of Section 12, township two south, range two west.

at private sale to U. S. Joines upon the following terms, to wit:

For the sum of $2,000.00, as follows; credit of three months, which has now been paid.

That said sale was made after due notice as prescribed by said Order of Sale; that said prchaser was the highest bidder therefor, and said sum the highest and best sum bid; that said sale was legally made and fairly conducted; that said sum is not disproportionate to the value of the property sold, and that a sum exceeding such bid at least ten (10) per cent, exclusive of the expense of a new sale cannot be obtained, and that the said William M. Patterson as such guardian in all things proceeded and conducted and managed such sale as required by the statute in such case made and provided and as by said order of sale required and directed.

It is therefore ordered, adjudged and decreed by the Court, that the said sale be, and the same is hereby confirmed and approved and declared valid, and the said William M. Patterson, as such guardian is directed to execute to said purchaser proper and legal conveyance of said real estate.

(Seal) W. W. Freeman,

County Judge.

Filed July 14, 1913.

(Upon the back of which appears the following filing endorsement, to wit.):

"Filed in the office of Court Clerk of Murray County, Okla. Sept. 27, 1920. Eva Vance-Masters, Court Clerk. By Mabel Berridge, Deputy."

STATEMENT.

Of the filing of an amended answer.

That thereafter, and on, to wit: the 18th day of Dec.,

1920, the defendant filed an amended answer to the petition herein, which said amended answer is in words and figures following, to wit:

State of Oklahoma, County of Bryan, ss. In the District Court.

W. M. Patterson et al., Plaintiffs, vs. U. S. Joines, Defendant. No. 1842.

Amended Answer.

Comes now the defendant, leave of court and consent of counsel for plaintiff having been first obtained, and files this his amended answer herein and for answer to the petition of the plaintiff herein filed, denies both generally and specifically each and every material allegation therein contained except such as are herein admitted.

This defendant specifically denies that the said plaintiffs or any or either of them are the owners of the lands described in plaintiff's petition, or have the right to the possession thereof.

This defendant admits that he is in possession of said lands and premises, and that he has been in possession thereof at all times since on or about the month of October, 1907.

Defendant further admits that the lands involved in this action were allotted to one Emma Patterson, a one-eighth blood Mississippi Choctaw Indian; that she died intestate in what was then the central District of Indian Territory, on or about the 14th day of May, 1906, and that at the time of her death she left surviving her, Wm. M. Patterson, her husband, and Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, J. Allen Patterson and Ruby Elnora Patterson, her children.

This defendant denies that the said Wm. M. Patterson, husband of the said Emma Patterson, aforesaid was

one of the heirs of the said Emma Patterson, as in said petition charged, or that he was entitled to a life estate in said lands.

He denies that $500.00 per annum was the reasonable rental value of said lands; denies that he has wrongfully detained the said lands from the said plaintiffs or any or either of them, and denies that they or either of them are entitled to recover the sum of $6,000.00, or any other sum as damages.

This defendant admits that the children above named are the heirs of the said Emma Patterson.

Further answering, this defendant says that the lands described in plaintiff's petition were filed after the death of the said Emma Patterson, by the aforesaid Wm. M. Patterson, her husband, as administrator of her estate, and that subsequent thereto, and between the date of the death of the said Emma Patterson and the 24th day of April, 1907, the said Wm. M. Patterson was appointed guardian of the children above named, all of whom were minors; and that thereafter, and to wit, on or about the 5th day of October, 1907, after due and legal probate proceedings duly and regularly had, the said guardian sold and conveyed the said lands to this defendant, and that a copy of said deed of conveyance is hereto attached, marked "Exhibit A," and made a part of this answer.

That said defendant has ever since said date been in possession of said lands, and that thereafter and to wit, on or about the 5th day of August, 1913, in order to correct certain errors of description in said former deed, a subsequent deed was executed by the said Wm. M. Patterson aforesaid, in favor of this defendant. A copy of said deed is hereto attached, marked Exhibit "B," and made a part hereof.

That said conveyances were duly and regularly ordered and approved by the Probate Court having

jurisdiction of the said estate and were in all things sufficient to and did convey all of the title of the said heirs of Emma Patterson to this defendant, and that copies of the Petition for Sale, Order of Sale, Report and Confirmation of Sale are hereto attached marked respectively "Exhibits C, D, E, and F", and made a part of this answer.

Further answering, and by way of estoppel, this defendant specially pleads that the plaintiff, Wm. M. Patterson, held himself out as guardian of the two said minor children aforesaid and represented to this plaintiff that the said children were the sole heirs of the said Emma Patterson, deceased, and had all of the right, title and interest in her said lands; and that by reason thereof, he is now estopped from setting upon and claiming any interest in or to the same.

Further specially pleading, this defendant says that if the said plaintiff Wm. M. Patterson ever had any right to the lands, and the proceeds accruing from said lands by reason of his alleged life estate therein, that the said action is now barred as to all except the last two years thereof by the Oklahoma Statute of Limitations, to wit: Section 4655 of the Revised Laws of the State of Oklahoma of 1910.

Further answering this defendant says that the said Wm. M. Patterson was a white man; that he was not enrolled as a member of either of the Five Civilized Tribes of Indians; that he was not a citizen of either of said tribes and that by reason thereof, he never was entitled to a curtesy interest in the lands of the said Emma Patterson.

Further answering, this defendant says that if the said Wm. M. Patterson ever had any right to a curtesy interest in the estate of the said Emma Patterson as against this defendant that it is now barred by the Arkansas Statute of Limitations in effect in Indian Territory at the time of sale of said lands, to wit:

Section — of Mansfield's Digest of the Laws of the State of Arkansas.

Further answering, defendant says that if the plaintiff in this action or any or either of them, ever had any right to maintain an action for the recovery of the lands herein mentioned and described, or any portion thereof, that said rights are now barred by the Oklahoma Statute of Limitation, to wit: Sections 4655, 4656 and 6583 of the Revised Laws of Oklahoma of 1910.

Further answering, defendant says that plaintiffs' action herein constitutes a collateral attack on the orders and judgments of the Probate Court in the guardianship sale under which defendant claims, and by reason thereof cannot be maintained.

Wherefore, these premises considered, defendant prays that plaintiffs' petition be denied and that plaintiff take nothing by reason of the action aforesaid, and that this defendant have judgment confirming his title to the said lands and forever barring, enjoining and restraining the said plaintiffs, and each of them from claiming or asserting any right, title or interest in and to the same.

Wm. G. Davisson,
Attorney for Defendant.

State of Oklahoma, County of Carter, ss:

U. S. Joines, being first duly sworn, says that he is the defendant in the above styled cause; that he has read the foregoing answer and knows the contents thereof, and that the matters and things therein stated are true.

U. S. Joines.

Subscribed and sworn to before me this 18th day of December, 1920.

(Seal)

Louise Wall,
Notary Public.

My commission expires .....

Guardian's Deed.

United States of America, Southern District, Indian Territory, ss:

Now, whereas, William M. Patterson was on the 27th day of March, A. D. 1907, appointed guardian of the persons and estates of his minor children, Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson and Ruby Elnora Patterson, by the United States Court in the Indian Territory, Central District, at Durant; and has duly qualified as such guardian of said minors and is now and has been at all times subsequent to said date aforesaid, the guardian of the persons and estates of said children.

And, whereas, the said Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson and Ruby Elnora Patterson have heretofore inherited the hereinafter mentioned and described lands and tenements from their deceased mother who died on the 14th day of May, 1906, said children being the sole and exclusive heirs thereof;

And, whereas, the said William M. Patterson, as the guardian aforesaid of the said minor children, did on the 24th day of April, 1907, file a written petition in the United States Court in the Indian Territory, Southern District at Ardmore, duly verified, praying for an order of court authorizing and directing a sale of said minors' interest in said lands hereinafter set forth and described, for the education, maintenance and support of said minors, the improvement of their estates and for investment purposes, said lands and tenements being situated within said court's jurisdiction;

And, whereas, the said United States Court in the Southern District of the Indian Territory at Ardmore, acting on said petition did on the 2nd day of May, A. D. 1907, authorize, order and direct the said William M. Patterson as guardian aforesaid of the said children to

sell and convey said children's right, title and interest in and to the said lands and tenements at public outcry, on a credit of three months, on the fifth day of July, 1907, between the hours of ten o'clock forenoon and four o'clock afternoon, in front of the building in the City of Ardmore, Indian Territory, in which United States Court is held;

And, whereas, the said William M. Patterson as guardian aforesaid, did in compliance with and in obedience to said order of court, more than twenty days before the fifth day of July, 1907, post written notices of said sale in ten of the most public places in the 21st Recording District of the Southern District of the Indian Territory, giving therein a particular description of said lands and tenements, the time, place and terms of sale as stated in the said order;

And, whereas, D. E. Booker, Guy T. Ledbetter and Will H. Wimberly, who had theretofore in said order aforesaid been appointed by said court to appraise said children's interest in said lands and tenements, did on the 18th day of June, 1907, take the prescribed oath required in this matter then viewed the said premises, and then did in writing appraise under their oath the right, title and interest of said minor children in said lands and tenements to be two thousand one hundred dollars ($2,100.00);

And, whereas, the said William M. Patterson, as guardian of the aforesaid children, did on the fifth day of July, 1907, between the hours of ten o'clock forenoon and four o'clock afternoon, in front of the building in the City of Ardmore, Indian Territory, in which United States Court is held, offer for sale all the right, title and interest of said children in and to the aforesaid lands and tenements hereinafter described, at public outcry to the highest bidder on a credit of three months.

And, whereas, at said time, place and sale U. S. Joines of Ardmore, Indian Territory, bid two thousand

($2,000.00) dollars therefor, which was the highest and best bid then and there offered and made; and the same being more than three-fourths of the said appraised value thereof, was then and there accepted by the said William M. Patterson, as such guardian aforesaid; and the same having now been paid;

Therefore, be it known to all men by these presents, that I, William M. Patterson, as the guardian of the persons and estate of Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson and Ruby Elnora Patterson, and each of them, minors, in consideration of the premises aforesaid and by virtue of my power and authority as guardian of said minors and their estates as aforesaid, and for and in consideration of the said sum of two thousand ($2,000.00) dollars cash in hand paid me by the said U. S. Joines, the receipt of which is hereby acknowledged, have granted, bargained, sold and conveyed, and do by these presents hereby grant, bargain, sell and convey unto the said U. S. Joines, his heirs and assigns, all the right, title and interest of the said Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson and Ruby Elnora Patterson, and of each of them, in and to the following described lands and tenements situated in the Southern District of the Indian Territory, to wit:

The north half of the northwest quarter, the north half of the northeast quarter, the southeast quarter of the northeast quarter, the northeast quarter of the southeast quarter, the east half of the southwest quarter of the northeast quarter, and the northwest quarter of the southwest quarter of the northeast quarter of section thirty one, township one south, range one west.

Also the south half of the southeast quarter of the southeast quarter, the south half of the southwest quarter of the southeast quarter, the northwest quarter of the southwest quarter of the southeast quarter, and the southeast quarter of the southeast quarter of the south-

west quarter of section seventeen, township one south, range one east.

Also the west half of the northwest quarter of the southeast quarter of section eight, township two south, range one west.

Also the northwest quarter of the northwest quarter of the northeast quarter of section twenty, township one south, range one east.

Also the southeast quarter of the southeast quarter, the north half of the northwest quarter of the [illegible]east quarter, and the southwest quarter of the northwest quarter of the northeast quarter of section twelve, township two south, range two east, the same being the identical lands petitioned to be sold, ordered to be sold, appraised and notices of sale posted, and sold, as aforesaid.

Together with and including all the rights, privileges, appurtenances and improvements thereon situated, connected therewith, or in anywise appertaining thereunto.

To have and to hold the same unto the said U. S. Joines, his heirs and assigns, in quiet and peaceable possession and in fee simple forever.

Witness my hand and signature as such guardian of said minor children this the 5th day of October, 1907.

W. M. Patterson,

As the Guardian of Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson and Ruby Elnora Patterson, as aforesaid.

Exhibit "A."

Guardian's Deed.

United States of America, State of Oklahoma, County of Bryan, ss.

Now, Whereas, William M. Patterson, was, on the 27th day of March, A. D. 1907, appointed guardian of the persons and estates of his minor children, Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson and Ruby Elnora Patterson, by the United States Court in the Indian Territory, Central District at Durant, and has duly qualified as such guardian of said minors, and is now and has been at all times subsequent to said date aforesaid the guardian of the persons and estates of said children, and,

Whereas, the said Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson and Ruby Elnora Patterson, have heretofore inherited the hereinafter mentioned and described lands and tenements from their deceased mother, who died on the 14th day of May, 1906, said children being the sole and exclusive heirs thereof, and,

Whereas, the said William M. Patterson, as the guardian aforesaid, of the said minor children, did, on the 24th day of April, 1907, after having previously given due, legal and timely notice of his intention to make application therefor, file a written petition in the United States Court in the Indian Territory, Southern District, at Ardmore, duly verified, praying for an order of court, authorizing and directing a sale of said minors' interest in said lands hereinafter set forth and described, for the education, maintenance and support of said minors, the improvements of their estates and for investment purposes, said lands and tenements being situated within said Court's jurisdiction, and,

Whereas, the said United States Court, in the Southern District of the Indian Territory, at Ardmore,

acting on said petition, did on the 2nd day of May, A. D. 1907, authorize, order and direct the said William M. Patterson, as guardian aforesaid of the said children, to sell and convey said children's right, title and interest in and to the said lands and tenements, at public outcry, on a credit of three months, on the fifth day of July, 1907, between the hours of ten o'clock forenoon and four o'clock afternoon, in front of the building in the City of Ardmore, Indian Territory, in which United States Court is held; and,

Whereas, the said William M. Patterson, as guardian aforesaid, did on compliance with and in obedience to said order of Court more than twenty days before the fifth day of July, 1907, post written notices of said sale in ten of the most public places in the 21st Recording District of the Southern District of the Indian Territory, giving therein a particular description of said lands and tenements of the time, place and terms of sale as stated in the said order; and,

Whereas, D. E. Booker, Guy T. Ledbetter and Will H. Wimberly, who had theretofore, in said order aforesaid, been appointed by said Court to appraise said children's interest in said lands and tenements, did on the 18th day of June, 1907, take the prescribed oath required in this matter, then viewed the said premises, and then did in writing appraise under their oath the right, title and interest of said minor children in said lands and tenements to be Two Thousand One Hundred Dollars ($2,100.00); and,

Whereas, the said William M. Patterson, as guardian of the aforesaid children, did on the fifth day of July, 1907, between the hours of ten o'clock forenoon and four o'clock afternoon, in front of the building in the City of Ardmore, Indian Territory, in which United States Court is held, offer for sale all the right, title and interest of said children in and to the aforesaid lands and tenements hereinafter described, at public

outcry to the highest bidder on a credit of three months; and,

Whereas, at said time, place and sale, U. S. Joines of Ardmore, Indian Territory, bid two thousand ($2,000.00) dollars therefor, which was the highest and best bid then and there offered, and made, and same being more than three-fourths of the said appraised value thereof, was then and there accepted by the said William M. Patterson, as such guardian aforesaid, and the same having now been paid, and,

Whereas, the said William M. Patterson, guardian as aforesaid, did on the 8th day of October, 1907, duly file his return herein showing that he had sold the said lands to the said U. S. Joines as aforesaid for the sum of Two Thousand ($2,000.00) Dollars, and showing all of his said acts done under said order of sale, and asking that said sale be confirmed; and,

Whereas, the County Court of Carter County, State of Oklahoma, being the successor of the United States Court for the Southern District of the Indian Territory, sitting at Ardmore, and being authorized to do any and all things herein which the said United States Court for the Southern district of the Indian Territory, sitting at Ardmore, could have done, did on the 14th day of July, 1913, make an order confirming said sale and directing conveyance to be executed by the said William M. Patterson, as guardian aforesaid, to the said U. S. Joines, a certified copy of which order of confirmation was recorded in the office of the Register of Deeds of Carter County on the 19th day of July, 1913, in Book Misc. Records 15 at page 27 thereof, and also in the office of the Register of Deeds of Murray County, on the 16th day of July, 1913, in Book Misc. Records 6, at page 1, within which said two counties the said lands are situated and which said order of confirmation now on file and of record in said two counties and which said records thereof in said two register of deeds offices are hereby referred to and made a part of this indenture.

Now, Therefore, the said William M. Patterson, as guardian of the said Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson and Ruby Elnora Patterson, minors as aforesaid, pursuant to the order last aforesaid of said County Court of Carter Co., Okla., and for and in consideration of the sum of Two Thousand Dollars ($2,000.00) cash in hand paid by said U. S. Joines to the said William M. Patterson, guardian, bargained, sold and conveyed, and by these presents does grant, bargain, sell and convey unto the said U. S. Joines, his heirs and assigns forever, all the right, title and interest and estate of the said Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson and Ruby Elnora Patterson, minors, as aforesaid, in and to all the certain lots, pieces or parcels of land situated and lying and being in the said counties of Carter and Murray, in the State of Oklahoma, and bounded and particularly described as follows, to wit:

The North half of the Northwest quarter, the North half of the Northeast quarter, the Southeast quarter of the Northeast quarter, the Northeast quarter of the Southeast quarter, the East half of the Southwest quarter of the Northeast quarter, and the Northwest quarter of the Southwest quarter of the Northeast quarter of Section Thirty-one, Township One South, Range One West. Also W½ of NW¼ of SE¼ of Sec. 8, Twp. 2 South, Range 1 West. Also the South half of the Southeast quarter of the Southeast quarter, the South half of the Southwest quarter of the Southeast quarter, the Northwest quarter of the Southwest of the Southeast quarter, and the Southeast quarter of the Southeast quarter of the Southwest quarter of Section Seventeen, Township One South, Range One East; also the Northwest quarter of the Northwest quarter of the Northeast quarter of Section Twenty, Township One South, Range One East. Also

the Southeast quarter of the Southeast quarter, the North half of the Northwest quarter of the Northeast quarter and the Southwest of the Northwest quarter of the Northeast quarter of Section Twelve, Township Two South, Range Two (2) West,

together with the tenements, hereditaments and appurtenances whatsoever to the same belonging, or in anywise appertaining.

To have and to hold all and singular the above mentioned and described premises unto the said U. S. Joines his heirs and assigns, forever.

In Witness Whereof, the said William M. Patterson, as guardian aforesaid, has hereunto set his hand this the 5th day of Aug., 1913.

W. M. Patterson,

As Guardian aforesaid of said minors.

Signed and delivered in the presence of
E. P. Williams.

Exhibit "B."

"EXHIBIT C."

In the United States Court in the Indian Territory, Southern District, Indian Territory, at Ardmore.

In the Matter of the Application of William M. Patterson, as Guardian of Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson, Ruby Elnora Patterson, as their legal guardian, for an order of sale of the lands inherited by them from their deceased mother, Emma Patterson.

PETITION AND COMPLAINT OF WM. M. PATTERSON AS GUARDIAN OF INDIAN MINORS FOR THE SALE OF INHERITED LANDS, THE SAID MINORS BEING INDIAN CITIZENS.

Come now your petitioner, Wm. M. Patterson, as Guardian of Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson and Ruby Elnora Patterson, as their natural and legal guardian, and respectfully states that they are minor children aged respectively 13, 10, 7, 3, and 1 year; and that they reside and live in the Central District of the Indian Territory about seven miles northwest of the City of Durant, Indian Territory, and that the said William M. Patterson, their said father and legal guardian, resides at the same place and with them; and that the said William M. Patterson was duly and legally appointed and qualified in the United States Court in the Indian Territory, Central District aforesaid, at Durant, as their legal and lawful guardian, which appointment and qualification has been duly approved by the said court.

Petitioner states that said minors are the children of William M. Patterson by his wife, Emma Patterson, born to them in lawful wedlock, and that they are the only children of the said parents, by the said or any other marriage, and that they are the only heirs of the said Emma Patterson whatsoever.

He states further that they are citizens of the Choctaw Nation by blood, being one-eighth Choctaw by blood, and seven-eighths white, and that they have, except the two youngest ones, selected and taken in severalty their allotments of the Choctaws and Chickasaws; that their said mother, Emma Patterson, was at the time of and prior to her death, which occurred on the 14th day of May, 1906, a citizen by blood of said Choctaw Nation, and that she was at the time of her said death entitled to take and select an allotment as aforesaid, and that her husband, the said William M.

Patterson, who on the — day of March, 1907, was duly appointed and qualified in said Court at Durant, Indian Territory, as administrator of said estate of said Emma Patterson, selected and took in allotment and filed upon in her name, the following described lands located and situated in the Southern District of the Indian Territory, which are wild, rocky, uninclosed mountain lands, the same being situated within the jurisdiction of the Honorable Court, to wit:

The North half of the Northwest quarter of Section 31, Township One South, Range One West; also the North half of the Northeast quarter of same section, township and range; also the Southeast quarter of the Northeast quarter of same Section, Township and Range; also the Northeast quarter of the Southeast quarter of same Section, Township and Range; also the East half of the Southwest quarter of the Northeast quarter of same Section, Township and Range; also the Northwest quarter of the Southwest quarter of the Northeast quarter of same Section, Township and Range; also the West half of the Northwest quarter of the Southeast quarter of Section Eight, Township Two South, Range One West; also the South half of the Southeast quarter of the Southeast quarter of Section Seventeen, Township One South, Range One East; also the South half of the Southwest quarter of the Southeast quarter of the same Section, Township and Range; also the Northwest quarter of the Southwest quarter of the Southeast quarter of same Section, Township and Range; also the Southeast quarter of the Southeast quarter of the Southwest quarter of same Section, Township and Range; also the Northwest quarter of the Northwest quarter of the Northeast quarter of Section Twenty, Township One South, Range One East; also the Southeast quarter of Southeast quarter of Section Twelve, Township

Two South, Range Two West; also the North half of the Northwest quarter of the Northeast quarter of same Section, Township and Range; also the Southwest quarter of the Northwest quarter of the Northeast quarter of same Section, Township and Range.

Petitioner further states that said minors are the sole and only heirs of their said mother, Emma Patterson, and that they have inherited the above described lands in fee simple from her; that they and each of them is entitled to an allotment of the lands of said tribes or nations, and that the three oldest have already selected and filed upon the same, and that the two youngest intend to, and will in a short time select and file upon lands for their allotments of same; that said minors have no property whatever except the aforesaid lands selected and filed as their allotments and such funds as may hereafter be distributed to them from the funds of said tribes or nations; that their said father, William M. Patterson, is a citizen of the United States, and not a citizen of either of the Five Civilized Tribes, and that he is practically insolvent, not owning exceeding five hundred dollars worth of property, including household effects; that the three oldest children now need to be educated, but that their said father is unable to so educate them or give them any educational advantages whatever; that the lands selected and filed upon by the three oldest children aforesaid and that intended to be filed upon by the two youngest, are wild lands and uncultivated, and that the same produce practically no revenue whatever out of which said children may be educated; that they have no funds, money or property with which to improve their said wild lands and reduce them to a state of cultivation, fence them, build houses thereon, and make them revenue producing; that it is for the interest and benefit of the said minors that the said inherited lands above described be sold under the orders of this Court, that

the funds derived therefrom be used to educate the said minors, and to be invested in the improvements of their own individual allotments and in such other way as appears proper and right, and to their best interests.

Wherefore, considering the above, petitioner prays for an order of this Honorable Court for the sale of said lands, in compliance with the law, and for the investment and use of the proceeds for the education of said minors and the improvements of their said lands, and for any and all other relief that they in equity and good conscience be entitled to.

Thos. Norman,

Attorney for Petitioner.

I, William M. Patterson, do solemnly swear that the facts and statements contained and set forth in the above petition are true.

W. M. Patterson.

Sworn to and subscribed before me this the — day of ————, 1907.

Luther D. Davis,

(Seal) Notary Public.

Filed at Ardmore, April 24, 1907.

C. M. Campbell,

Clerk, and *Ex officio* Recorder, District No. 21, Ind. Ter.

It appearing the within named minors are seized of lands herein in fee simple from their deceased mother, the father *nor* claiming any right or title thereto and that it is to the best interest of said minors that said lands be sold to provide for their education and support and to improve their separate estates, so as to make them productive and revenue producing, I respectfully

recommend to the Court that the petition be granted, and that said lands be appraised at the present reasonable market value, based on a fee simple title, and that said sale be made in all respects as by law provided, and that said guardian execute bond in double the amount that said lands shall sell for with and in more good and sufficient sureties to be approved by the Clerk of this Court.

Respectfully,

C. M. Campbell, Clerk.
By G. S. Gates, Dep.

5-2-07.

EXHIBIT D.

In the United States Court in the Indian Territory, Southern District, at Ardmore.

In the Matter of the Petition of William M. Patterson, as the guardian of Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson, Ruby Elnora Patterson, for an order for the sale of lands inherited by said minors from their deceased mother Emma Patterson.

ORDER OF COURT GRANTING THE PETITION FOR SALE OF INHERITED INDIAN LANDS.

This cause coming on to be heard in open court on this the 2nd day of May, 1907, on the petition filed herein by William M. Patterson as the legal guardian of Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson and Joseph Allen Patterson and Ruby Elnora Patterson, minors, asking for an order of Court for the sale of the hereinafter mentioned lands and premises which are alleged to have been inherited by said minors from their deceased mother, Emma Patterson, and it appearing to the Court that the said William M. Patterson is the legal guardian of said minors; that

they are the owners of the lands hereinafter mentioned and set forth, having inherited the same from their mother, Emma Patterson, deceased; that the said Emma Patterson and the said minors are citizens of the Choctaw Nation by blood, not full blood but of mixed blood, and that the hereinafter mentioned lands and premises have heretofore been allotted to their said mother, Emma Patterson, as her allotment of same; that the said minors have no personal property, but only their allotments, and said lands so inherited, and that all of said lands, are wild and uncultivated and non-revenue producing; that said children should be educated and their maintenance provided for and their lands made revenue producing; that their said father, William M. Patterson, is practically insolvent and unable to properly provide out of his own funds for their education and maintenance, or to improve their lands so as to make the same revenue producing; that it would be for the best interest of said minors that the said lands be sold and the funds derived therefrom be applied to their education, maintenance, improvement of their other lands, and for investment in a way to produce an income and revenue; that all of said matters have heretofore been passed upon by the Clerk of this Court under directions of the Court, and that said Clerk has reported in writing that said lands should be sold and that the order prayed for should be granted;

And the Court being fully advised in the premises having reached the same conclusion;

It is therefore ordered and decreed by the Court that the said William M. Patterson, as the guardian of said minors aforesaid, shall sell and convey all of said minors' interest in and to the following described tracts and parcels of land located and situated in the Southern District of the Indian Territory, as follows, to wit:

The North half of the Northwest quarter of Sec-

tion 31, Township One South, Range One West; also the North half of the Northeast quarter of same section, township and range; also the Southeast quarter of the Northeast quarter of same section, township and range; also the Northeast quarter of the Southeast quarter of same section, township and range; also the East half of the southwest quarter of the Northeast quarter of same section, township and range; also the Northwest quarter of the Southwest quarter of the Northeast quarter of the same Section, township and range; also the West half of the Northwest quarter of the Southeast quarter of Section Eight, Township Two South, Range One West; also the South half of the Southeast quarter of the Southeast quarter of Section Seventeen, Township One South, Range One East; also the South half of the Southwest quarter of the Southeast quarter of same section, township and range; also the Northwest quarter of the Southwest quarter of the Southeast quarter of same section, township and range; also the Southeast quarter of the southeast quarter of the Southwest quarter of same section, township and range; also the Northwest quarter of the Northwest quarter of the Northeast quarter of Section Twenty, Township One South, Range One East; also the Southeast quarter of the Southeast quarter of Section Twelve, Township Two South, Range Two West; also the North half of the Northwest quarter of the Northeast quarter of same section, township and range; also the Southwest quarter of the Northwest quarter of the Northeast quarter of same section, township and range;

the same being the identical lands set forth in said petition.

That the sale of same shall be, in all things, conducted in accordance with law and the order of this

Court; that D. E. Booker, Guy T. Ledbetter and W. H. Wimberly, who are disinterested persons, are hereby appointed appraisers, and they shall take the oath prescribed by law, and conform in the appraisement, after viewing the said lands, as provided for by law; that the said William M. Patterson, as guardian, shall put up or cause to be put up notices of said sale at least twenty days before the date of sale thereof at ten of the most public places in the 21st recording district of the Southern District of the Indian Territory, particularly describing therein the lands to be sold, the time and place of sale and the terms thereof; that said sale shall be on a three months credit, and shall take place in front of the building in the City of Ardmore, Indian Territory, in which United States Court is held; and said sale shall be at public outcry to the highest bidder, between the hours of ten o'clock forenoon and four o'clock afternoon, July 5th, 1907.

It is further ordered that the said guardian shall execute a good and sufficient bond with not less than two sureties, to be approved by the Clerk of this Court, in double the sum the land shall be appraised at, to conduct the sale with fidelity to the interest of his wards, and faithfully to account for the proceeds of the sale according to law and as the order of this Court may require.

"EXHIBIT E."

In the United States Court in the Indian Territory, Southern District, at Ardmore.

In the Matter of the Petition of William M. Patterson, as the guardian of the persons and estates of Dorcth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson, and Ruby Elnora Patterson, minors.

REPORT OF SALE MADE BY GUARDIAN.

Comes now petitioner, William M. Patterson, as the legal guardian of the persons and estates of Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson, and Ruby Elnora Patterson, and reports to this Honorable Court that he, in obedience to the orders of this Court made and entered on the 2nd day of May, A. D. 1907, wherein and whereby petitioner was authorized, ordered and directed to sell at public outcry to the highest bidder on a credit of three months, on July 5th, 1907, between the hours of ten o'clock forenoon and four o'clock afternoon, in front of the Court House building in the City of Ardmore, Indian Territory, the following described lands and tenements situated in the Southern District of the Indian Territory, to wit:

The north half of the northwest quarter; the north half of the northeast quarter; the southeast quarter of the northeast quarter, the northeast quarter of the southeast quarter; the east half of the southwest quarter of the northeast quarter; the northwest quarter of the southwest quarter of the northeast quarter of section thirty-one, township one south, range one west;

Also the south half of the southeast quarter of the southeast quarter; the south half of the southwest quarter of the southeast quarter; the northwest quarter of the southwest quarter of the southeast quarter; and the southeast quarter of the southeast quarter of the southwest quarter of section seventeen, township one south, range one east.

Also the west half of the northwest quarter of the southeast quarter of section eight, township two south, range one west;

Also the northwest quarter of the northwest

quarter of the northeast quarter of section twenty, township one south, range one east;

Also the southeast quarter of the southeast quarter; the north half of the northwest quarter of the northeast quarter; and the southwest quarter of the northwest quarter of the northeast quarter of section twelve, township two south, range two west.

Your petitioner duly advertised and published the said sale by posting written notices thereof in ten of the most public places in the twenty-first Recording District, Southern District, Indian Territory, for more than twenty days continuously before the said date of sale, July 5, 1907, wherein a particular description of the lands and tenements to be sold was given; the time, place and terms of sale, in which said notices it was stated that the interest to be sold was the interests of the said children therein which was stated to be the fee simple title thereof, which was in no wise incumbered whatsoever. Prior to the said date of sale, to wit, on the 18th day of June, 1907, D. E. Booker, Guy T. Ledbetter and Will H. Wimberly who had theretofore been appointed appraisers by this Court to appraise said lands and tenements, took the prescribed oath required in such cases, then viewed the said lands and premises, and thereafterwards appraised the same, and made and submitted a written report of their appraisement, which report is hereto attached and made a part hereof. They appraised the said lands and tenements to be two thousand one hundred dollars ($2,100.00), all of which was appraised as the interests of said minor wards mentioned hereinbefore.

On the day of sale prescribed by said order—that is, on the 5th day of July, 1907—your petitioner offered the interests of said minors in said land and tenements for sale at public outcry to the highest bidder on a credit of three months in front of the building in which the United States Court is held in the City of Ardmore,

Indian Territory, between the hours of ten o'clock forenoon and four o'clock afternoon. At said time, place and sale U. S. Joines bid for same the sum of $2,000.00, which said bid of said U. S. Joines for said amount, $2,000.00, being the highest and best bid was then and there accepted by petitioner.

The bid so made for same by said U. S. Joines, and so accepted by your petitioner, was, in the opinion of your petitioner, equal to the full value of the interests of said minors in said lands and premises, that is, to the value of the fee simple title thereof, free and unincumbered in anywise whatever.

Your petitioner further states that he endeavored, in all proper and legitimate ways, to cause the said lands and tenements to sell for the highest price possible, and that he neither omitted, neglected or left undone anything he could do to further the interests of his said wards in said sale; that the lands having brought their full value, your petitioner suggests that the said sale should be approved and confirmed, and he so asks.

Your petitioner further states that he has executed and delivered to the said U. S. Joines a deed conveying to him the interests of his said wards in said lands and tenements, a copy of which is hereto attached and made a part hereof; and he asks that said deed be approved and confirmed, so as to vest in said U. S. Joines all the right, title and interest of his said wards in said lands and tenements in accordance with the said sale aforesaid.

Petitioner further states that he was not the purchaser of said wards' interests in said lands and tenements, or of any part thereof, and that they were not

purchased for his use or benefit, and that he is not in any way whatever interested in the purchase thereof.

W. M. Patterson,

As the guardian of the persons and estate of Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson, and Ruby Elnora Patterson, minors.

Subscribed and sworn to before me this the 5th day of October, 1907.

S. H. Kyle,
Notary Public.

(Seal)

Filed at Ardmore, October 8, 1907. C. M. Campbell, Clerk and Officio Recorder, District No. 21, Ind. Ter.

"EXHIBIT F."

State of Oklahoma, County of Carter, ss. In County Court.

In the Matter of the Estate of Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson and Ruby Elnora Patterson, Minors.

Order Confirming Sale of Real Estate—Guardian.

Now on this 14th day of July, 1913, there coming on for hearing the return of sale made by William M. Patterson, as the guardian of the estates of Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson, and Ruby Elnora Patterson, appearing Thos. Norman, as attorney for said guardian, and no one appearing to object to the confirmation of the sale made by said guardian, nor any motion or objection thereto filed herein by any one, the order of

said sale having been made on 2nd day of May, 1907, by the United States Court in and for the Southern District of the Indian Territory, sitting at Ardmore therein, within the limits of what is now Carter County, Oklahoma, which said return was filed herein October 8th, 1907, and the Court having examined said return, and having heard and considered the evidence of witnesses offered in support of said return, it being the successor of the said United States Court in the Indian Territory sitting at Ardmore therein for the purposes hereof, and being fully advised in the premises, finds:

That in pursuance of said order of sale, said William M. Patterson as such guardian on the 5th day of July, 1907, sold the portion of real estate of said estate described as follows, to wit:

The north half of the northwest quarter, the north half of the northeast quarter, the southeast quarter of the northeast quarter, the northeast quarter of the southeast quarter, the east half of the southwest quarter of northeast quarter and the northwest quarter of the southwest quarter of the northeast quarter of section thirty-one, township one south, range one west.

Also the south half of the southeast quarter of the southeast quarter, the south half of the southwest quarter of the southeast quarter, the northwest quarter of the southwest quarter of the southeast quarter, and the southeast quarter of the southeast quarter of the southwest quarter of section seventeen, township one south, range one east.

Also the west half of the northwest quarter of the southeast quarter of section eight, township two south, range one west.

Also the northwest quarter of northwest quarter of the northeast quarter of section twenty, township one south, range one east.

Also the southeast quarter of the southeast quarter, the north half of the northwest quarter of the northeast quarter, and the southwest quarter of the northwest quarter of the northeast quarter of section twelve, township two south, range two west,

at public sale to U. S. Joines upon the following terms, to wit:

For the sum of $2,000.00, payable as follows: Credit of three months, which has now been paid.

That said sale was made after due notice as prescribed by said order of sale; that said purchaser was the highest bidder therefor, and said sum the highest and best sum bid; that said sale was legally made and fairly conducted; that said sum is not disproportionate to the value of the property sold, and that a sum exceeding such bid at least ten (10) per cent, exclusive of the expense of a new sale, cannot be obtained, and that the said William M. Patterson as such guardian in all things proceeded and conducted and managed such sale as required by the statute in such case made and provided, and as by said order of sale required and directed.

It is therefore ordered, adjudged and decreed by the Court that the said sale be and the same is hereby confirmed and approved and declared valid, and the said William M. Patterson as such guardian is directed to execute to said purchaser proper and legal conveyance of said real estate.

W. F. Freeman,
County Judge.

(Seal)

Filed July 14, 1913.

(Upon the back of which appears the following filing endorsement, to wit:)

Filed in Open Court in the District Court of Murray County, Okla., Dec 13, 1920. Edna Swearing, Court Clerk.

STATEMENT

Of the filing of Agreed Statement of Facts and submission of cause to the Court for decision.

That thereafter, and on, to wit, the 26th day of May, 1921, the plaintiffs and defendant filed in open court an Agreed Statement of Facts in said cause, which said Agreed Statement of Facts is in words and figures following, to wit:

In the District Court of Murray County, State of Oklahoma.

W. M. Patterson, Doroth A. McFarland, *nee* Patterson, and Shelby A. Patterson, and Howell M. Patterson, a minor; J. Allen Patterson, a minor, and Ruby E. Patterson, a minor, by their next friend, W. M. Patterson, plaintiffs, vs. U. S. Joines, defendant. No. 1842.

AGREED STATEMENT OF FACTS.

It is hereby agreed by and between the above named plaintiffs by their attorneys, Hayes & McIntosh, and the defendant, U. S. Joines, by his attorney, Wm. G. Davisson:

1. That the following described lands and premises were allotted to Emma Patterson, a Miss. Choc. of the one-fourth blood, to wit:

E½ of the NE¼ and the E½ of the W½ of NE¼ and NW¼ of SW¼ of NE¼ and W½ of NW¼ of NE¼ and N½ of NW¼ and NE¼ of SE¼ of section 31, township 1 south, range 1 west, and also W½ of NW ¼ of SE¼ of Sec. 8, township 2 south, range 1 west, containing 280 acres, more or less, according to the United States survey thereof, located and situated in Murray County, State of Oklahoma.

and

The W½ of the NE¼ of the NE¼ of section 27,

township 2 south, range 6 west, containing 20 acres, more or less, according to the United States survey thereof, located and situated in Stephens County, State of Oklahoma.

and

The $N\frac{1}{2}$ of the $NW\frac{1}{4}$ of the $NE\frac{1}{4}$, and the $SW\frac{1}{4}$ of the $NW\frac{1}{4}$ of $NE\frac{1}{4}$ and the $SE\frac{1}{4}$ of $SE\frac{1}{4}$ of section 12, township 2 south, range 2 west of the Indian Base Meridian, located and situated in Carter County, State of Oklahoma, containing 70 acres, more or less, according to the United States survey thereof.

2. That the said Emma Patterson died intestate on or about the 14th day of May, 1906, in what was then the Central District of Indian Territory, and that at the time of her death she left surviving her her husband, W. M. Patterson, and her children, to wit: Doroth A. Patterson, female; Shelby A. Patterson, male; Howell M. Patterson, male; J. Allen Patterson, male, and Ruby E. Patterson, female, which said children were born to the said W. M. Patterson and Emma Patterson in lawful wedlock.

3. That the lands hereinabove described were filed on and allotted to the said Emma Patterson after her death by the said W. M. Patterson, her husband, as administrator of her estate.

4. That, W. M. Patterson, the husband of said Emma Patterson, was a white person and not on the tribal rolls and not a citizen, and that the said Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, J. Allen Patterson and Ruby E. Patterson were Miss. Cho. of the one eighth blood.

5. That the children of the said Emma Patterson,

plaintiffs herein, were born on the following dates, to wit:

Doroth A. McFarland, *nee* Patterson	9 March 25, 1894
Shelby A. Patterson	6 March 25, 1897
Howell M. Patterson	3 March 25, 1900
J. Allen Patterson	May 30, 1903
Ruby E. Patterson	Sept. 9, 1905

and on this the 20th day of December, 1920, are of the following ages, to wit:

Doroth A. McFarland, nee Patterson, 26 yrs., 8 months and 25 days.

Shelby A. Patterson, 23 years, 8 mths. and 25 days.
Howell M. Patterson, 20 yrs., 8 mths. and 25 days.
J. Allen Patterson, 17 yrs., 6 mths. and 20 days.
Ruby E. Patterson, 15 yrs., 3 mths. and 11 days.

6. That on the 24th day of April, 1907, W. M. Patterson, as the duly qualified and acting guardian of the persons and estates of the above named minors, filed in the United States Court for the Southern District of the Indian Territory at Ardmore his petition for the sale of the above described lands, a copy of which petition is hereto attached, made a part hereof and marked Exhibit "A"; that on the 2nd day of May, 1907, the United States Court sitting at Ardmore, Indian Territory, entered its order authorizing said guardian to sell said land, a copy of said order is hereto attached, made a part hereof, and marked Exhibit "B".

7. That on the 8th day of October, 1907, the said W. M. Patterson, as guardian of said minors, filed in the United States District Court at Ardmore, Oklahoma, his Report of Sale, a copy of which report of sale is hereto attached, made a part hereof and marked Exhibit "C".

8. That on the 14th day of July, 1913, the County

Court of Carter County, State of Oklahoma, entered its Order Confirming Sale of said real estate by said guardian, a copy of which Order of Confirmation is hereby attached, made a part hereof and marked Exhibit "D".

9. That on the 5th day of August, 1913, W. M. Patterson, as a guardian of said minors, executed a Guardian's deed to said lands to said defendant, a copy of which Guardian's deed is hereto attached, made a part hereof and marked Exhibit "E".

10. That W. M. Patterson above named was appointed guardian of the above named Doroth A. Patterson on December 7, 1904, at Durant, in the Central District of the Indian Territory; that the said W. M. Patterson was appointed guardian of Shelby A. Patterson and Howell M. Patterson above named on the 19th day of September, 1904, at Durant, in the Central District of the Indian Territory; that the said W. M. Patterson was appointed guardian of J. Allen Patterson and Ruby E. Patterson above named on the 22nd day of April, 1907, in the United States District Court of the Central District of Indian Territory, at Durant, Oklahoma; that the guardianship of the above named minors was never at any time pending in the Southern District of the Indian Territory or in Carter County, Oklahoma, except in the matter of the sale of said property as herein agreed and shown.

11. That on the 5th day of October, 1907, W. M. Patterson, as the guardian of said minors, executed a Guardian's Deed to the said defendant herein, copy of said deed is hereto attached, made a part hereof and marked Exhibit "F"; that the only order confirming the sale of said lands which was ever made is that shown as "Exhibat D" to this stipulation.

12. That the said U. S. Joines took possession of said lands and premises above described and has been in the peaceful possession of same from on or about the

5th day of October, 1907, until the present time, and is now in the possession of said lands.

13. That the said W. M. Patterson, husband of said Emma Patterson, and father of said above named children, has never at any time executed to U. S. Joines, or any other person, any deed whatsoever to his individual interest, if any, in and to said lands, and that no adult heirs joined in said sale.

14. That appraisers were appointed, appraisement was had, bonds were filed, notices were given and sale was held, reports were filed, deeds were executed and confirmation was had at the times, places and in the manner in the orders, reports, deeds and judgment, attached hereto as exhibits, ordered set forth and recited.

Respectfully submitted,

Hayes & McIntosh,
Attorneys for Plaintiffs.

Wm. G. Davisson,
Attorney for Defendant.

EXHIBIT "A."

In the United States Court in the Indian Territory, Southern District, Indian Territory, at Ardmore.

In the Matter of the Application of William M. Patterson, as Guardian of Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson, Ruby Elnora Patterson, as Their Legal Guardian for an Order of Sale of the Lands Inherited by Them From Their Deceased Mother, Emma Patterson.

Petition and Complaint of Wm. M. Patterson, as Guardian of Indian Minors for the Sale of Inherited Lands, the Said Minors Being Indian Citizens.

Comes now your petitioner, Wm. M. Patterson, as guardian of Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson and Ruby Elnora Patterson, as their natural and legal guardian, and respectfully states that they are minor children, aged, respectively, 13, 10, 7, 3 and 1 years; and that they reside and live in the Central District of the Indian Territory about seven miles northwest of the City of Durant, Indian Territory, and that the said William M. Patterson, their said father and legal guardian, resides at the same place and with them; and that the said William M. Patterson was duly and legally appointed and qualified in the United States Court in the Indian Territory, Central District aforesaid, at Durant, as their legal and lawful guardian, which appointment and qualification has been duly approved by the said court.

Petitioner states that said minors are the children of William M. Patterson by his wife, Emma Patterson, born to them in lawful wedlock, and that they are the only children of the said parents, by the said or any other marriage, and that they are the only heirs of the said Emma Patterson, whatsoever.

He states further that they are citizens of the Choctaw Nation by blood, being one-eighth Choctaw by blood and seven-eighths white, and that they have, except the two youngest ones, selected and taken in severalty their allotments of the Choctaws and Chickasaws; that their said mother, Emma Patterson, was at the time of and prior to her death, which occurred on the 14th day of May, 1906, a citizen by blood of said Choctaw Nation, and that she was at the time of her said death entitled to take and select an allotment as aforesaid, and that her husband, the said William M. Patterson, who on the ---

day of March, 1907, was duly appointed and qualified in said court at Durant, Indian Territory, as administrator of said estate of said Emma Patterson, selected and took in allotment and filed upon in her name, the following described lands located and situated in the Southern District of the Indian Territory, which are wild, rocky, unineclosed mountain lands, the same being situated within the jurisdiction of this honorable court, to wit:

The north half of the northwest quarter of Section 31, Township 1 South, Range 1 West; also the north half of the northeast quarter of same section, township and range; also the southeast quarter of the northeast quarter of same section, township and range; also the northeast quarter of the southeast quarter of same section, township and range; also the east half of the southwest quarter of the northeast quarter of same section, township and range; also the northwest quarter of the southwest quarter of the northeast quarter of same section, township and range; also the west half of the northwest quarter of the southeast quarter of section eight, township two south, range one west; also the south half of the southeast quarter of the southeast quarter of section seventeen, township one south, range one east; also the south half of the southwest quarter of the southeast quarter of the same section, township and range; also the northwest quarter of the southwest quarter of the southeast quarter of same section, township and range; also the southeast quarter of the southeast quarter of the southwest quarter of same section, township and range; also the northwest quarter of the northwest quarter of the northeast quarter of section twenty, township one south, range one east; also the southeast quarter of the southeast quarter of section twelve, township two south, range two west; also the north half of the northwest quarter of the northeast quarter of same section, township and range; also the southwest quarter of the northwest quarter of the northeast quarter of same section, township and range.

Petitioner further states that said minors are the sole and only heirs of their said mother, Emma Patterson, and that they have inherited the above described lands in fee simple from her; that they, and each of them is entitled to an allotment of the lands of said tribes of nations, and that the three oldest have already selected and filed upon the same, and that the two youngest intend to, and will in a short time, select and file upon lands for their allotments of same; that said minors have no property whatever except the aforesaid lands selected and filed as their allotments and such funds as may hereafter be distributed to them from the funds of said tribes or nations; that their father, William M. Patterson, is a citizen of the United States, and not a citizen of either of the Five Civilized Tribes, and that he is practically insolvent, not owning exceeding five hundred dollars worth of property, including household effects; that the three oldest children now need to be educated, but that their said father is unable to so educate them or give them any educational advantages whatever; that the lands selected and filed upon by the three oldest children aforesaid, and that intended to be filed upon by the two youngest, are wild lands and uncultivated, and that the same produce practically no revenue whatever out of which said children may be educated; that they have no funds, money or property with which to improve their said wild lands and reduce them to a state of cultivation, fence them, build houses thereon, and made them revenue producing; that it is for the interest and benefit of the said minors that the said inherited lands above described be sold under the orders of this court, and that the funds derived therefrom be used to educate the said minors, and to be invested in the improvements of their own individual allotments, and in such other way as appears proper and right, and to their best interests.

Wherefore, considering the above, petitioner prays for an order of this honorable court for the sale of said lands in compliance with the law, and for the investment

and use of the proceeds for the education of said minors and the improvement of their said lands, and for any and all other relief that they in equity and good conscience be entitled to.

Thos. Norman,

Attorney for Petitioner.

I, William M. Patterson, do solemnly swear that the facts and statements contained and set forth in the above petition are true.

W. M. Patterson.

Subscribed and sworn to before me this the ... day of ....., 1907.

Luther D. Davis,
(Seal) Notary Public.

It appearing that within named minors are seized of lands herein in fee simple from their deceased mother, the father not claiming any right or title thereto, and that it to the best interest of said minors that said lands be sold to provide for their education and support and to improve their separate estates, so as to make them productive and revenue producing, I respectfully recommend to the court that the petition be granted, and that said land be appraised at the present reasonable market value, based on a fee simple title, and that the said sale be made in all respects as by law provided, and that said guardian execute bond in double the amount that said lands shall sell for with and in more good and sufficient sureties to be approved by the clerk of this court.

Respectfully,

C. M. Campbell, Clerk.
By G. S. Gates, Deputy.

5/2/07.
Filed Apr. 24, 1907.

EXHIBIT "B."

In the United States Court in the Indian Territory, Southern District at Ardmore.

In the Matter of the Petition of William M. Patterson as the guardian of Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson, Ruby Elnora Patterson for an order for the sale of lands inherited by said minors from their deceased mother, Emma Patterson.

Order of Court Granting the Petition for Sale of Inherited Indian Lands.

This cause coming on to be heard in open court on this the 2nd day of May, 1907, on the petition filed herein by William M. Patterson as the legal guardian of Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson and Ruby Elnora Patterson, minors, asking for an order of court for the sale of the hereinafter mentioned lands and premises which are alleged to have been inherited by said minors from their deceased mother, Emma Patterson, and it appearing to the court that the said William M. Patterson is the legal guardian of said minors; that they are the owners of the lands hereinafter mentioned and set forth, having inherited the same from their mother, Emma Patterson, deceased; that the said Emma Patterson and the said minors are citizens of the Choctaw Nation by blood, not full blood, but of mixed blood, and that the hereinafter mentioned lands and premises have heretofore been allotted to their said mother, Emma Patterson, as her allotment of same; that the said minors have no personal property, but only their allotments are wild and uncultivated and non-revenue producing; that said children should be educated and their maintenance provided for and their lands made revenue producing; that their said father, William M. Patterson, is practically insolvent, and unable to properly provide out of his own funds for

their education and maintenance, or to improve their lands so as to make the same revenue producing; that it would be for the best interest of said minors that the said lands be sold and the funds derived therefrom be applied to their education, maintenance, improvements of their other lands, and for investment in a way to produce an income and revenue; that all of said matters have heretofore been passed upon by the clerk of this court under directions of the court, and that said clerk has reported in writing that said lands should be so sold, and that the order prayed for should be granted.

And the court, being fully advised in the premises, having reached the same conclusion:

It is therefore ordered and decreed by the court that the said William M. Patterson, as the guardian of said minors aforesaid, shall sell and convey all of said minors' interest in and to the following described tracts and parcels of land located and situated in the Southern District of the Indian Territory, as follows, to wit:

The north half of the northwest quarter of Section 31, Township 1 South, Range 1 West; also the north half of the northeast quarter of same section, township and range; also the southeast quarter of the northeast quarter of same section, township and range; also the northeast quarter of the southeast quarter of same section, township and range; also the east half of the southwest quarter of the northeast quarter of same section, township and range; also the northwest quarter of the southwest quarter of the northeast quarter of the same section, township and range; also the west half of the northwest quarter of the southeast quarter of section eight, township two south, range one west; also the south half of the southeast quarter of southeast quarter of section seventeen, township one south, range one east; also the south half of the southwest quarter of the southeast quarter of same section, township

and range; also the northwest quarter of the southwest quarter of the southeast quarter of same section, township and range; also southeast quarter of the southwest quarter of the southwest quarter of same section, township and range; also the northwest quarter of the northwest quarter of the northeast quarter of section twenty, township one south, range one east; also the southeast quarter of the southeast quarter of section twelve, township two south, range two west; also the north half of the northwest quarter of the northeast quarter of same section, township and range; also the southwest quarter of the northwest quarter of the northeast quarter of same section, township and range; the same being the identical lands set forth in said petition.

That the sale of same shall be, in all things, conducted in accordance with law and the order of this court; that D. E. Booker, Guy T. Ledbetter and W. H. Wimberly, who are disinterested persons, are hereby appointed appraisers, and they shall take the oath prescribed by law, and conform in the appraisement, after viewing the said lands, as provided for by law; that the said William M. Patterson, as guardian, shall put up, or cause to be put up, notices of said sale at least twenty days before the date of sale thereof at ten of the most public places in the 21st Recording District of the Southern District of the Indian Territory, particularly describing therein the lands to be sold, the time and place of sale and the terms thereof; that said sale shall be on a 3 months credit and shall take place in front of the building in the City of Ardmore, Indian Territory, in which United States Court is held; and said sale shall be at public outcry to the highest bidder, between the hours of ten o'clock forenoon and four o'clock afternoon, July 5th, 1907.

It is further ordered that the said guardian shall

execute a good and sufficient bond with not less than two sureties, to be approved by the clerk of this court, in double the *sum* the lands shall be appraised at to conduct the sale with fidelity to the interest of his wards, and faithfully to account for the proceeds of the sale according to law, and as the order of this court may require.

EXHIBIT "C."

In the United States Court in the Indian Territory, Southern District at Ardmore.

In the Matter of the Petition of William M. Patterson as the guardian of the persons and estates of Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson and Ruby Elnora Patterson, minors.

REPORT OF SALE MADE BY GUARDIAN.

Comes now petitioner, William M. Patterson, as the legal guardian of the persons and estates of Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson and Ruby Elnora Patterson, and reports to this Honorable Court that he, in obedience to the orders of this court made and entered on the 2nd day of May, A. D. 1907, wherein and whereby petitioner was authorized, ordered and directed to sell at public outcry to the highest bidder on a credit of three months, on July 5th, 1907, between the hours of ten o'clock forenoon and four o'clock afternoon, in front of the court building in the City of Ardmore, Indian Territory, the following described lands and tenements situated in the Southern District of the Indian Territory, to wit:

The north half of the northwest quarter, the north half of the northeast quarter, the southeast quarter of the northeast quarter, the northeast quarter of the southeast quarter, the east half of the southwest

quarter of the northeast quarter; the northwest quarter of the southwest quarter of the northeast quarter of section thirty-one, township one south, range one west. Also the south half of the southeast quarter of the southeast quarter, the south half of the southwest quarter of the southeast quarter, the northwest quarter of the southwest quarter of the southeast quarter and the southeast quarter of the Southeast quarter of the southwest quarter of section seventeen, township one south, range one east. Also the west half of the northwest quarter of the southeast quarter of section eight, township two south, range one west. Also the northwest quarter of the northwest quarter of the northeast quarter of section twenty, township one south, range one east. Also the southeast quarter of the southeast quarter, the north half of the northwest quarter of the northeast quarter and the southwest quarter of the northwest quarter of the northeast quarter of section twelve, township two south, range two west.

Your petitioner duly advertised and published the said sale by posting written notices thereof in ten of the most public places in the Twenty-first Recording District, Southern District; Indian Territory, for more than twenty days continuously before the said date of sale, July 5, 1907, wherein a particular description of the lands and tenements to be sold was given, the time, place and terms of sale, in which said notices it was stated that the interest to be sold was the interests of the said children therein, which was stated to be the fee simple title thereof, which was in no wise incumbered whatsoever prior to the said date of sale, to wit: On the 18th day of June, 1907; D. E. Booker, Guy T. Ledbetter and Will H. Wimberly, who had theretofore been appointed appraisers by this court to appraise said lands and tenements, took the prescribed oath required in such cases, then viewed the said lands and premises, and

thereafterwards appraised the same and made and submitted a written report of their appraisement, which report is hereto attached and made a part hereof. They appraised the said lands and tenements to be two thousand one hundred dollars ($2,100.00), all of which was appraised as the interests of said minor wards mentioned hereinbefore. On the day of sale prescribed by said order; that is, on the fifth day of July, 1907, your petitioner offered the interests of said minors in said lands and tenements for sale at public outcry to the highest bidder on a credit of three months in front of the building in which the United States Court is held in the City of Ardmore, Indian Territory, between the hours of ten o'clock forenoon and four o'clock afternoon. At said time, place and sale, U. S. Joines bid for same the sum of $2,000.00, which said bid of said U. S. Joines for said amount, $2,000.00, being the highest and best bid, was then and there accepted by petitioner.

The bid so made for same by said U. S. Joines, and so accepted by your petitioner, was, in the opinion of your petitioner, equal to the full value of the interests of said minors in said lands and premises; that is, to the value of the fee simple title thereof, free and unincumbered in anywise whatever.

Your petitioner further states that he endeavored, in all proper and legitimate ways, to cause the said lands and tenements to sell for the highest price possible; and that he neither omitted, neglected or left undone anything he could do to further the interests of his said wards in said sale; that the lands, having brought their full value, your petitioner suggests that the said sale should be approved and confirmed, and he so asks.

Your petitioner further states that he executed and delivered to the said U. S. Joines a deed conveying to him the interests of his said wards in said lands and tenements, a copy of which is hereto attached and made a part hereof, and he asks that said deed be approved

and confirmed, so as to vest in said U. S. Joines all the right, title and interests of his said wards in said lands and tenements in accordance with the said sale aforesaid.

Petitioner further states that he was not the purchaser of said wards' interests in said lands and tenements, or of any part thereof, and that they were not purchased for his use or benefit, and that he is not in any way whatever interested in the purchase hereof.

W. M. Patterson,
As the Guardian of the Persons and Estates of Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson and Ruby Elnora Patterson, Minors.

Subscribed and sworn to before me this the 5th day of October, 1907.

(Seal) S. H. Kyle, Notary Public.

Filed Oct. 8, 1907.

C. M. Campbell, Clerk.

EXHIBIT "D."

State of Oklahoma, Carter County, ss. In County Court.

In the Matter of the Estate of Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson and Ruby Elnora Patterson, Minors.

Order Confirming Sale of Real Estate—Guardian.

Now, on this 14th day of July, 1913, there coming on for hearing the return of sale made by William M. Patterson as the guardian of the estate of Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson and Ruby Elnora Patterson, Thos. Norman, as attorney for said guardian, and no

one appearing to object to the confirmation of the sale made by said guardian, nor any motion or objection thereto filed herein by any one, the order of said sale having been made on 2nd day of May, 1907, by the United States Court in and of the Southern District of the Indian Territory sitting at Ardmore therein, within the limits of which is now Carter County, Oklahoma, which said return was filed herein October 8, 1907, and the court having examined said return, and having heard and considered the evidence of witnesses offered in support of said return, it being the successor of the said United States Court in the Indian Territory sitting at Ardmore therein for the purposes hereof and being fully advised in the premises finds:

That in pursuance of said order of sale, said William M. Patterson, as such guardian on the 5th day of July, 1907, sold the portion of real estate of said estate described as follows, to wit:

> The north half of the northwest quarter, the north half of the northeast quarter, the southeast quarter of the northeast quarter, the northeast quarter of the southeast quarter, the east half of the southwest quarter of the northeast quarter and the northwest quarter of the southwest quarter of the northeast quarter of section thirty-one, township one south, range one west. Also the south half of the southeast quarter of the southeast quarter, the south half of the southwest quarter of the southeast quarter, the northwest quarter of the southwest quarter of the southeast quarter and the southeast quarter of the southeast quarter of the southwest quarter of section seventeen, township one south, range one east. Also the west half of the northwest quarter of the southeast quarter of section eight, township two south, range one west. Also the northwest quarter of the northwest quarter of the northeast quarter of section twenty, township one south, range one

east. Also the southeast quarter of the southeast quarter, the north half of the northwest quarter of the northeast quarter, and the southwest quarter of the northwest quarter of the northeast quarter of section twelve (12), township two south, range two west,

at private sale to U. S. Joines upon the following terms, to wit:

For the sum of $2,000.00, payable as follows, credit of three months which has not been paid.

That said sale was made after due notice as prescribed by said order of sale; that said purchaser was the highest bidder therefor, and said sum the highest and best sum bid; that said sale was legally made and fairly conducted; that said sum is not disproportionate to the value of the property sold, and that sum exceeding such bid at least ten (10) per cent, exclusive of the expense of a new sale cannot be obtained, and that the said William M. Patterson, as such guardian, in all things proceeded and conducted and managed such sale as required by the statute in such case made and provided and as by said order of sale required and directed.

It is therefore ordered, adjudged and decreed by the court that the said sale be, and the same is hereby, confirmed and approved and declared valid, and the said William M. Patterson, as such guardian, is directed to execute to said purchaser proper and legal conveyance of said real estate.

W. F. Freeman,
County Judge.

(Seal)

Filed July 14, 1913.

EXHIBIT "F."

United States of America, Southern District, Indian Territory, ss:

GUARDIAN'S DEED.

Now, whereas, William M. Patterson was on the 27th day of March, A. D. 1907, appointed guardian of the persons and estates of his minor children, Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson and Ruby Elnora Patterson, by the United States Court in the Indian Territory, Central District, at Durant, and has duly qualified as such guardian of said minors and is now and has been at all times subsequent to said date aforesaid the guardian of the persons and estate of said children;

And, whereas, the said Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson and Ruby Elnora Patterson have heretofore inherited the hereinafter mentioned and described lands and tenements from their deceased mother who died on the 14th day of May, 1906, said children being the sole and exclusive heirs thereof;

And, whereas, the said William M. Patterson as the guardian aforesaid of the said minor children, did, on the 24th day of April, 1907, filed a written petition in the United States Court in the Indian Territory, Southern District at Ardmore, duly verified, praying for an order of Court authorizing and directing a sale of said minor's interest in said lands hereinafter set forth and described, for the education, maintenance and support of said minors, the improvements of their estates and for investment purposes, said land and tenements being situated within said Court's jurisdiction;

And, whereas, the said United States Court in the Southern District of the Indian Territory at Ardmore, acting on said petition did, on the 2nd day of May, A. D.,

1907, authorize, order and direct the said William M. Patterson as guardian aforesaid of the said children, to sell and convey said children's right, title and interest in and to the said lands and tenements at public outcry, on a credit of 3 months, on the fifth day of July, 1907, between the hours of ten o'clock forenoon and four o'clock afternoon, in front of the building in the City of Ardmore, Indian Territory, in which United States Court is held;

And, whereas, the said William M. Patterson, as guardian aforesaid, did, in compliance with and in obedience to said order of Court, more than twenty days before the fifth day of July, 1907, post written notices of sale in ten of the most public places in the 21st Recording District of the Southern District of the Indian Territory, giving therein a particular description of said lands and tenements, the time, place and terms of sale as stated in the said order;

And, whereas, D. E. Booker, Guy T. Ledbetter and Will H. Wimberly, who had theretofore in said order aforesaid, been appointed by said Court to appraise said children's interests in said lands and tenements, did on the 18th day of June, 1907, take the prescribed oath required in this matter, then viewed the said premises, and then did in writing appraise under their oath the right, title and interest of said minor children in said lands and tenements to be two thousand one hundred dollars ($2,100.00);

And, whereas, the said William M. Patterson, as guardian of the aforesaid children did, on the fifth day of July, 1907, between the hours of ten o'clock forenoon and four o'clock afternoon, in front of the building in the City of Ardmore, Indian Territory, in which United States Court is held, offer for sale all the right, title and interest of said children in and to the aforesaid lands and tenements hereinafter described, at public outcry to the highest bidder on a credit of three months;

And, whereas, at said time, place and sale, U. S. Joines, of Ardmore, Indian Territory, bid Two Thousand ($2,000.00) Dollars therefor, which was the highest and best bid then and there offered and made; and the same being more than three fourths of the said appraised value thereof, was then and there accepted by the said William M. Patterson, as such guardian aforesaid, and the same now having been paid;

Therefore, be it known to all men by these presents, that I, William M. Patterson, as the guardian of the persons and estates of Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson, and Ruby Elnora Patterson, and each of them, minors, in consideration of the premises aforesaid, and by virtue of my power and authority as guardian of said minors and their estate as aforesaid, and for and in consideration of the said sum of Two Thousand ($2,000.00) Dollars cash in hand, paid by the said U. S. Joines, the receipt of which is hereby acknowledged, have granted, bargained, sold, and conveyed, and do by these presents here grant, bargain sell and convey unto the said U. S. Joines, his heirs and assigns, all the right, title and interest of the said Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson, and Ruby Elnora Patterson, and of each of them, in and to the following described lands and tenements situated in the Southern District of the Indian Territory, to wit:

> The North half of the northwest quarter, the north half of the northeast quarter, the southeast quarter of the northeast quarter, the northeast quarter of the southeast quarter, the east half of the southwest quarter of the northeast quarter, and the northwest quarter of the southwest quarter of the northeast quarter of section thirty-one, township one south, range one west.
>
> Also, the south half of the southeast quarter of the

southeast quarter, the south half of the southwest quarter of the southeast quarter, the northwest quarter of the southwest quarter of the southeast quarter, and the southeast quarter of the southeast quarter of the southwest quarter of section seventeen, township one south, range one east.

Also, the west half of the northwest quarter of the southeast quarter of section eight, township two south, range one west; also, the northwest quarter of the northwest quarter of the northeast quarter of section twenty, township one south, range one east.

Also, the southeast quarter of the southeast quarter; the north half of the northwest quarter of the northeast quarter, and the southwest quarter of the northwest quarter of the northeast quarter of section twelve, township two south, range two east, the same being the identical lands petitioned to be sold, ordered to be sold, appraised, and notices of sale posted and sold, as aforesaid.

Together with and including all the rights, privileges with, or in anywise appertaining thereunto.

To have and to hold, the same unto the said U. S. Jones, his heirs and assigns, in quiet and peaceable possession and in fee simple forever.

Witness my hand and signature as such guardian of said minor children this the 5th day of October, 1907.

W. M. Patterson.

As the guardian of Doroth A. Patterson, Shelby A. Patterson, Joseph Allen Patterson, and Ruby Elnora Patterson, as aforesaid.

United States of America, Central District, ss.

ACKNOWLEDGMENT.

On this, the 5th day of October, A. D. 1907, came and appeared in person before me, the undersigned, Notary Public within and for the Central District of the Indian Territory, William M. Patterson, personally well known to me to be the person whose name appears upon and to the foregoing instrument as the party grantor, and stated to me that he had executed the same for the uses, purposes and consideration therein mentioned and set forth, and in the capacity of guardian of Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson, and Ruby Elnora Patterson as therein mentioned and set forth, and I hereby do so certify.

Witness my hand and signature as such Notary Public, this the 5th day of October, A. D., 1907.

(Seal) S. H. Kile,
Notary Public as aforesaid.

United States of America, State of Oklahoma, County of Bryan, ss

EXHIBIT "E"

Now, whereas, William Patterson, was, on the 7th day of March A. D. 1907, appointed guardian of the persons and estates of his minor children, Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson and Ruby Elnora Patterson, by the United States Court in the Indian Territory, Central District at Durant and has duly qualified as such guardian of said minors, and is now and has been at all times subsequent to said date aforesaid the guardian of the persons and estates of said children:

And, whereas, the said Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Pat-

terson, and Ruby Elnora Patterson, have heretofore inherited the hereinafter mentioned and described lands and tenements from their deceased mother who died on the 14th day of May, 1906, and said children being the sole and exclusive heirs thereof;

And, whereas, the said William M. Patterson, as the guardian aforesaid, of the said minor children did, on the 24th day of April 1907, after having previously given due, legal and timely notice of his intention to make application therefor, file a written petition in the United States Court in the Indian Territory, Southern District, at Ardmore, duly verified, praying for an order of Court authorizing and directing a sale of said minors' interest in said lands hereinafter set forth and described for the education, maintenance and support of said minors, the improvement of their estates and for investment purposes, said lands and tenements being situated within said Court's jurisdiction;

And, whereas, the said United States Court in the Southern District of the Indian Territory at Ardmore, acting on said petition, did, on the 2nd day of May, A. D. 1907, authorize, order and direct the said William M. Patterson as guardian aforesaid of the said children to sell and convey said children's right title and interest in and to the said lands and tenements at public outcry on a credit of three months on the fifth day of July, 1907, between the hours of ten o'clock forenoon and four o'clock afternoon in front of the building in the City of Ardmore, Indian Territory, in which the United States Court is held.

And, whereas, the said William M. Patterson as guardian aforesaid did, in compliance with and in obedience to said order of Court more that twenty days before the fifth day of July, 1907, post written notices of said sale in ten of the most public places in the 21st Recording District of the Southern District of Indian Territory giving therein a particular description of said

lands and tenements, the time, place, and terms of sale as stated in the said order;

And, whereas, D. E. Booker, Guy T. Ledbetter, and Will H. Wimberly, who had theretofore in said order aforesaid been appointed by said Court to appraise said children's interest in said lands and tenements, did, on the 18th day of June, 1907, take the prescribed oath required in this matter, then viewed the said premises and then did in writing appraise under their oath the right, title and interest of said minor children in said lands and tenements to be Two Thousand One Hundred Dollars ($2,100.00).

And, whereas, the said William M. Patterson as guardian of the aforesaid children did, on the fifth day of July, 1907, between the hours of ten o'clock forenoon and four o'clock afternoon in front of the building in the City of Ardmore, Indian Territory, in which United States Court is held, offer for sale all the right, title and interest of said children in and to the aforesaid lands and tenements hereinafter described, at public outcry to the highest bidder on a credit of three months;

And, whereas, at said time, place and sale U. S. Joines, of Ardmore, Indian Territory, bid Two Thousand ($2,000.00) Dollars therefor which was the highest and best bid then and there offered and made, and the same being more that three fourths of the said appraised value thereof, was then and there accepted by the said William M. Patterson as such Guardian aforesaid, and the same having now been paid;

And, Whereas, the said William M. Patterson, guardian as aforesaid, did, on the 8th day of October, 1907, duly file his return herein showing that he had sold the said lands to the said U. S. Joines as aforesaid for the sum of Two Thousand Dollars ($2,000.00) and showing all of his acts done under said order of sale, and asking that said sale be confirmed.

And, whereas, the County Court of Carter County, State of Oklahoma, being the successors of the United States Court for the Southern District of the Indian Territory, sitting at Ardmore, and being authorized to do any and all things herein which the said United States Court for the Southern District of the Indian Territory sitting at Ardmore could have done, did on the 14th day of July, 1913, make an order confirming said sale and directing a conveyance to be executed by the said William M. Patterson as guardian aforesaid to the said U. S. Joines, a certified copy of which order of confirmation was recorded in the office of the Register of Deeds of Carter County on the 19th day of July, 1913, in book Misc. Records 15, at page 27, thereof and also in the office of the Register of Deeds of Murray County, on the 16th day of July, 1913, in Book Misc. Records 6, at page 1, within which said two counties the said lands are situated and which said order of confirmation now on file and of record in said two counties and which said records thereof in said two register of deeds offices are hereby referred to and made a part of this indenture.

Now, therefore, the said William M. Patterson, as guardian of said Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Patterson and Ruby Elnora Patterson, minors as aforesaid, pursuant to the order last aforesaid of said County Court of Carter County, Oklahoma, and for and in consideration of the sum of Two Thousand Dollars ($2,000.00) cash in hand paid by the said U. S. Joines to the said William M. Patterson, guardian as aforesaid, the receipt of which is hereby acknowledged, has granted, bargained, sold and conveyed and by these presents does grant, bargain, sell and convey unto the said U. S. Joines, his heirs and assigns forever, all the right, title and interest and estate of the said Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, Joseph Allen Pat-

terson, and Ruby Elnora Patterson, minors, as aforesaid, in and to all the certain lots, pieces or parcels of land situated and lying and being in the said Counties of Carter and Murray, in the State of Oklahoma, and bounded and particularly described as follows, to wit:

The north half of the northwest quarter, the north half of the northeast quarter, the southeast quarter of the northeast quarter, the northeast quarter of the southeast quarter, the east half of the southwest quarter of the northeast quarter and the northwest quarter of the southwest quarter of the northeast quarter of section thirty one, township one south, range one west.

Also, the south half of the southeast quarter of the southeast quarter, the south half of the southwest quarter of the southeast quarter, the northwest quarter of the southwest quarter of the southeast quarter, and the southeast quarter of the southeast quarter of the southwest quarter of section seventeen, township one south, range one east.

Also, the west half of the northwest quarter of the southeast quarter of section eight, township two south, range one west.

Also, the northwest quarter of the northwest quarter of the northeast quarter of section twenty, township one south, range one east.

Also, the southeast quarter of the southeast quarter, the north half of the northwest quarter of the northeast quarter, and the southwest quarter of the northwest quarter of the northeast quarter of section twelve, township two south, range two (2) west.

together with the tenements, hereditaments and appurtenances whatsoever to the same belonging or in any way appertaining.

To have and to hold all and singular the above mentioned and described premises unto the said U. S. Joines, his heirs and assigns forever.

In witness whereof the said William M. Patterson, as guardian aforesaid, has hereunto set his hand this the 5th day of Aug., 1913.

Wm.
W. M. Patterson,

As Guardian Aforesaid of Said Minors.

Signed and delivered in the presence of E. P. Williams.

State of Oklahoma, Bryan County, ss:

Before me, the undersigned, a notary public within and for said county state, on this 5th day of Aug., 1913, personally appeared William M. Patterson, as the guardian of Doroth A. Patterson, Joseph Allen Patterson, Shelby A. Patterson, Howell A. Patterson and Ruby Elnora Patterson, minors, to me known to the identical persons who executed the within and foregoing instrument and acknowledged to me that he executed the same in the capacity therein stated as his free and voluntary act and deed for the uses and purposes therein set forth.

E. P. Williams,
Notary Public.

(Seal)

My commission expires Aug. 23, 1916.

Filed for record August 6th, 1913, at 3:30 p. m. in Deed 14, page 148.

(Upon the back of which appears the following filing endorsement, to wit):

Filed in Murray County, Okla., May 26, 1921. *Edna Swearengen*, Court Clerk.

STATEMENT

Of filing of Conclusions of Law based on Agreed Statement of Facts by the Court.

Be it Remembered: That thereafter and to wit: On the 26th day of May, 1921, the Court filed his Conclusions of Law, which Conclusions of Law are in words and figures as follows, to wit:

In the District Court of Murray County, State of Oklahoma.

W. M. Patterson, Doroth A. McFarland, *nee* Patterson, and Shelby A. Patterson, and Howell M. Patterson, a minor, J. Allen Patterson, a minor, and Ruby E. Patterson, a minor, by their next friend, W. M. Patterson, Plaintiffs, vs. U. S. Joines, Defendant. No. 1842.

In this case the Agreed Statement of Facts contained in three pages with Exhibits is adopted as Conclusions of Facts.

CONCLUSIONS OF LAW.

I find that W. M. Patterson upon the death of his wife, Emma Patterson, acquired a life estate or estate by courtesy in the lands in controversy. I find further that the interest acquired by him is barred by the seven years Statute of Limitations of the Arkansas law then in force in the Indian Territory, the lands having been sold and report thereof having been made in 1907, prior to the time said Territory became a part of the State of Oklahoma.

Second: I further find that by the acts and conduct of said W. M. Patterson that he was estopped to bring this action by reason of his conduct, in putting defendant in possession at the time of sale of his wards' interest and allowing him to remain in possession for fourteen years without complaint.

Third: I find that the Southern District of the Indian Territory had jurisdiction to authorize the Guardian's sale and the confirmation thereof by the County Court of Carter County was not void, and that plaintiffs are not in position to attack the same collaterally.

Fourth: I find that the minor heirs were authorized to sell through their guardian without joining any adult heirs, there being no adult heirs at that time.

Fifth: I find that all adult heirs, to wit: Doroth A. McFarland and Shelby Patterson, are barred by the Statute of Limitations, and resolve all issues in favor of the defendant.

T. P. Clay,
District Judge Assigned.

(Upon the back of which appears the following filing endorsement, to wit:)

Filed in Murray County, Okla., May 26, 1921. *Edna Swearing*, Court Clerk.

STATEMENT

Of the rendition of judgment and order overruling motion for new trial.

That thereupon the Court proceeded to and did make and enter judgment herein in favor of the defendant and against the plaintiffs, to which action of the Court in rendering said judgment, and which judgment, the plaintiffs then and there excepted and their exceptions were by the Court allowed, the said judgment and decree by the Court so rendered herein being in words and figures as follows, to wit:

JUDGMENT AND NOTICE OF APPEAL.

And now judgment is rendered for the defendant and against the plaintiff, that plaintiff take nothing by

reason of this action and that defendant recover his costs. To which action of the Court the plaintiff excepts and his exceptions are allowed; and now on this the 26 day of May, 1921, came on to be heard the Motion of plaintiff for a new trial, and after hearing said motion the same is in all things overruled; to which action of the Court the plaintiff excepts and now in open court gives notice of appeal to the Supreme Court of the State of Oklahoma, and the same is directed to be entered upon the trial docket of this Court, and for good cause shown the plaintiff is granted 90 days in which to make and serve a case made, 10 days for the opposite party to suggest amendments; same to be settled on five days notice.

T. P. Clay,

District Judge Assigned.

(Upon the back of which appears the following filing endorsement, to wit:)

"Filed in Murray County, Okla., May 27, 1921. *Edna Sweezea*, Court Clerk."

STATEMENT

Of the filing of a Motion for New Trial.

That thereafter and on to wit: the 26th day of May, 1921, said plaintiffs filed a Motion for New Trial, praying that the Court set aside and hold for naught the judgment heretofore rendered herein and to grant him a new trial herein, said Motion for a New Trial so filed herein by the plaintiffs being in words and figures following, to wit:

In the District Court of Murray County, State of Oklahoma.

W. M. Patterson et al., Plaintiffs, vs. U. S. Joines, Defendant. No. 1842.

Motion for New Trial.

Comes now the plaintiffs and move the Court to vacate and set aside the judgment rendered herein on the 26th day of May, 1921, and to grant a new trial for the following causes, which affect materially the substantial rights of said plaintiffs:

1. That the judgment and decisions of the Court rendered herein is not sustained by sufficient evidence and is contrary to law.

2. That the Court erred in his conclusions of fact, because they are not sustained by the evidence.

3. That the Court erred in his conclusions of law.

4. That the judgment of the Court is contrary to both the evidence and the law.

Wherefore, plaintiffs ask that the judgment *h*eretofore rendered be set aside and held for naught, and that a new trial be granted.

Hayes & McIntosh,

Attorneys for Plaintiffs.

(Upon the back of which appears the following filing endorsement, to wit:)

Filed in open court in the District Court of Murray County, Okla. May 26, 1921. Edna *Sweatena*, Court Clerk.

In the District Court of Murray County, State of Oklahoma.

W. M. Patterson et al., Plaintiffs, vs. U. S. Joines, Defendant. No. 1842.

Statement of What Case-Made Contains.

The above and foregoing Case-Made sets out fully, completely and correctly all pleadings filed; all motions

and demurrers made or filed, and the orders and filings thereon; all evidence offered, introduced and received; objections; exceptions; admissions and agreements; all instructions given to the jury; the findings; judgments; records, and proceedings upon which the judgment rendered herein is based, and that the same is a full, true, complete and correct statement, copy and transcript of all the pleadings, motions, demurrers, orders, rulings, evidence, objections, exceptions, admissions, agreements, findings, judgments, records and proceedings in the above entitled and numbered cause upon which the judgment therein is based.

In the District Court of Murray County, State of Oklahoma.

W. M. Patterson et al., Plaintiffs, vs. U. S. Joines, Defendant. No. 1842.

SERVICE OF CASE-MADE.

To the Above Named U. S. Joines, and His Attorney of Record, Wm. G. Davisson:

The above and foregoing case-made is hereby tendered to and served upon you and each of you as a full, true and complete case-made in the above entitled and numbered cause, and as being a full, true, complete and correct statement, copy of transcript of all pleadings filed, motion and demurrers made or filed, orders, rulings, evidence, objections, exceptions, admissions, agreements, findings, conclusions, judgments, records and proceedings in the above entitled and numbered cause upon which the judgment rendered herein is based.

Hayes & McIntosh and
Hatchett & Semple,
Attys. for Plaintiffs.

I, the undersigned, Attorney of Record for the De-

fendant, for and on his behalf hereby accept service of the above and foregoing case made on me this the 10th day of Aug., 1921.

Wm. G. Davisson,
Atty. for Defendant.

In the District Court of Murray County, State of Oklahoma.

W. M. Patterson et al., Plaintiffs, vs. U. S. Joines, Defendant. No. 1842.

Agreement That Case Made is Complete.

It is hereby agreed and stipulated by and between the plaintiff and defendant in the above entitled and numbered cause, by and through their respective attorneys of record, the undersigned, that the within and foregoing case made contains a full, true, complete and correct copy and transcript of all of the pleadings, motions, demurrers, orders, rulings, statement of fact, evidence, objections, exceptions, admissions, agreements, judgment, records and proceedings in the above entitled and numbered cause, upon which the judgment therein is based, and that the same is a full, true and complete case made in the above entitled and numbered cause.

Attys. for Plaintiffs.

Wm. G. Davisson,
Atty. for Defendant.

In the District Court of Murray County, State of Oklahoma.

W. M. Patterson et al., Plaintiffs, vs. U. S. Joines, Defendant. No. 1842.

WAIVER OF AMENDMENTS AND NOTICE OF SETTLEMENT OF CASE MADE.

I, the undersigned, attorney of record for the defendant in the above entitled and numbered cause, for and on his behalf, hereby waive the right to suggest amendments to the above and foregoing case-made and waive the service upon the defendant of notice of the presentation of said case-made to the trial judge of said Court for settling, signing and certifying, and hereby consent that said case-made may be presented to said judge and by him settled, signed and certified at any time.

Wm. G. Davisson,
Atty. for Defendant.

In the District Court of Murray County, State of Oklahoma.

W. M. Patterson et al., Plaintiffs, vs. U. S. Jones, Defendant. No. 1842.

JUDGE'S CERTIFICATE.

I, the undersigned, Judge of the District Court within and for Murray County, Oklahoma, by assignment, hereby certify that the above and foregoing case-made was this day presented to me at Cheyenne, Roger Mills Co., Oklahoma, by the plaintiffs therein to be settled, signed and certified as the original case-made therein and it appearing to me that the said case-made has been duly made and served upon the defendant within the time fixed by the order of the Court, and that the right to suggest amendments and the service of notice of settlement of case-made have been waived in writing, in the case made, by the defendant therein, and that no amendments have been made or suggested, said case-made is examined by me and is found to be a true, full and correct case-made and to contain a full, true, complete and correct copy and transcript of all the evi-

dence, agreements, records and proceedings in said cause upon which the judgment therein is based; and,

I, therefore, hereby allow, settle, sign and certify the same as being a full, true, complete and correct case-made in the above entitled and numbered cause and hereby order that the same be filed by the Clerk of the aforesaid Court, and my signature hereto attached by him, and that he affix the seal of said Court thereto, and that he, thereupon, deliver the same to the plaintiffs therein for filing in the Supreme Court of the State of Oklahoma.

Witness my hand in Chambers in the City of Cheyenne, Roger Mills Co., State of Oklahoma, this 10th day of Sept., 1921.

T. P. Clay,

Judge of the — Judicial District of Oklahoma, assigned to Murray Co.

(Seal)

Attest: Edna Swearengin, Court Clerk, Murray Co., Okla

I, the undersigned, hereby certify that the above and foregoing case-made, after the same had been duly signed by the District Judge of Murray County, Oklahoma, and attested by me, was filed in the office of the Court Clerk of Murray County, Oklahoma, this 1st day of October, 1921 and thereafter withdrawn from the files by the said plaintiffs herein.

(Seal) Edna Swearengin,

Court Clerk, Murray County, Oklahoma.

Filed Oct. 1, 1921. Edna Swearengin, Court Clerk, Murray County, Okla. By ..... Deputy.

And thereafter on the 5th day of June, 1923, there was filed in said cause in the Supreme Court of the State of Oklahoma Journal Entry Permitting Plaintiff in Error to File Typewritten Brief, which said Journal Entry is recorded in Journal No. 12, at page 68, and is in words and figures as follows, to wit:

Supreme Court, April Term, 1923, June 5th, 1923, Fifteenth Judicial Day.

United States of America, State of Oklahoma, ss.

Be it Remembered, that on this June 5th, 1923, Supreme Court convened pursuant to adjournment of May 29, 1923.

Present: N. E. McNeill, Acting Chief Justice; M. J. Kane, J. B. Harrison, F. E. Kennamer, and C. B. Cochran, Associate Justices; W. M. Franklin, Clerk, and F. S. Hillman, Marshal.

Public proclamation of the opening of the Court having been made for the transaction of such business as might properly come before it, the following proceedings were had, to wit:

* * * * * * * * * * *

12797. Wm Patterson, et al. vs. U. S. Joines.

And now on this day it is order by the court that plaintiff in error be permitted to file typewritten brief in the above cause.

* * * * * * * * * * *

Journal 12 Page 68.

And thereafter on the 9th day of October, 1923, there was filed in said cause in the Supreme Court of the State of Oklahoma Journal Entry Overruling Motion to Advance, which said Journal Entry is recorded in Journal 12 at page 184 and is in words and figures as follows, to wit:

Supreme Court, October Term, 1923, October 9th, 1923, First Judicial Day.

United States of America, State of Oklahoma, ss.

Be it Remembered, that on this Oct. 9, 1923, Supreme Court convened pursuant to the regular October 1923 term of Court.

Present: J. T. Johnson, Chief Justice; M. J. Kane, N. E. McNeill, G. M. Nicholson, F. E. Kennamer, C. B. Cochran, F. P. Branson and C. W. Mason, Associate Justices; W. M. Franklin Clerk, and P. S. Hillman, Marshal.

Public proclamation of the opening of Court having been made for the transaction of such business as might properly come before it, the following proceedings were had, to wit:

* * * * * * * * * * *

12797. W. M. Patterson, et al. vs. U. S. Joines.

And now on this day it is ordered by the Court that the motion to advance filed in the above cause be and the same is hereby overruled.

* * * * * * * * * * *

Journal 12 Page 184.

And thereafter on the 11th day of December, 1923, there was filed in said cause in the Supreme Court of the State of Oklahoma Journal Entry of Submission, which said Journal Entry is recorded in Journal No. 12, at page 256, and is in words and figures as follows, to wit:

Supreme Court, December Term, 1923. December 11th, 1923. First Judicial Day.

United States of America, State of Oklahoma, ss.

Be it Remembered that on this Dec. 11, 1923, Supreme Court convened for the regular December 1923 term of Court.

Present: J. T. Johnson, Chief Justice; M. J. Kane, J. B. Harrison, F. E. Kennamer, and C. B. Cochran, Associate Justices; W. M. Franklin, Clerk, and P. S. Hillman, Marshal.

Public proclamation of the opening of Court having been made for the transaction of such business as might properly come before it, the following proceedings were had, to wit:

* * * * * * * * * * *

12797. W. M. Patterson, et al., vs. U. S. Jones.

* * * * * * * * * * *

And now on this day the above cause is submitted on the record and briefs filed therein.

* * * * * * * * * * *

Journal 12, Page 256.

And thereafter on the 16th day of December, 1924, there was filed in said cause in the Supreme Court of the State of Oklahoma Journal Entry of Opinion, which said Journal Entry is recorded in Journal 12, at p. 448, and is in words and figures as follows, to wit:

Supreme Court, December Term, 1924. December 16th, 1924. Second Judicial Day.
United States of America, State of Oklahoma, ss.

Be it Remembered, that on this Dec. 16, 1924, Supreme Court convened pursuant to adjournment of Dec. 9th 1924.

Present: N. E. McNeill, Chief Justice; J. T. Johnson, G. M. Nicholson, F. P. Branson, C. W. Mason, F. L. Warren and J. H. Gordon, Associate Justices; W. M. Franklin, Clerk, and P. S. Hillman, Marshal.

Public proclamation of the opening of Court having been made for the transaction of such business as might properly come before it, the following proceedings were had, to wit:

* * * * * * * * * * *

12797. W. M. Patterson et al. vs. U. S. Joines. Opinion by Stephenson, C.

* * * * * * * * * * *

And now this cause comes on for final decision and determination by the Court upon the record and briefs filed therein.

And the Court having considered the same finds that the judgment of the trial court in the above cause should be affirmed.

It is therefore ordered and adjudged by the Court that the judgment of the trial court in the above cause be and the same is hereby affirmed.

* * * * * * * * * * *

Journal 12, page 448.

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA.

W. M. Patterson et al., Plaintiffs in Error, vs. U. S. Joines, Defendant in Error. No. 12,797.

SYLLABUS.

1. The probate code as contained in Mansfield's Digest, as construed by the Supreme Court of Arkansas, fixed venue to order of the sale of real estate owned by a minor in the probate court of the county in which the minor's land is situated, although the guardianship cause was pending in another probate court.

2. Whether the probate court in which the guardianship cause was pending, in the county of the residence of the minor, could order the sale of the minor's land situated in another county was not decided by the Supreme Court of Arkansas prior to the date of the extension of the probate code of Arkansas over the Indian Territory.

3. An act of the legislature in adopting a statute of another state includes the decisions of supreme court of the originating state, construing the statutes, prior to adoption, and such decisions are binding on all courts of the adopting state until modified or overruled by the supreme court of the latter state.

4. This court in the consideration of an appeal before it will not modify or overrule a decision of the supreme court of the originating state, construing the adopted statute, when to do so would have the effect of destroying a title resting on a judicial proceeding had in accordance with the adopted statute, as construed by the supreme court of the originating state, unless the decision thereon by the court of the latter state is manifestly against the expressed legislative intention, or clearly against public policy of the adopting state.

5. By the act of Congress of May 2nd, 1890, and supplementary acts extending the probate code of Arkansas, as contained in Mansfield's Digest, over the Indian Territory, the acts provide that where the word 'county' appears in any of the Arkansas acts it should be read as 'district' in the application of the the laws of the Indian Territory.

6. In the admission of the State of Oklahoma into the Union, by virtue of Section 19 of the Enabling Act (34 Stat. at L. 227) and Section 23 of the schedule of the Constitution, the state court having jurisdiction situated in the county of the location of the Federal court, succeeded the latter court in jurisdiction of all such cases pending in the Federal court, and was authorized to continue to exercise all such jurisdiction until the cause was properly transferred to some other court.

7. In the trial of a cause upon an agreed statement of facts, on appeal this court is bound by the propositions of law as made by the agreed statement of facts between the parties.

8. Record examined; *Held*, that the judgment in favor of the defendant as based upon the agreed statement of facts submitted by the parties for the trial of the cause is supported by law and is without error.

Syllabus by Stephenson, C:

Error from the District Court of Murray County. T. P. Clay, Judge.

Action by W. M. Patterson et al. against U. S. Joines to quiet title in plaintiffs' real estate as described in petition of plaintiffs. Judgment for defendant. Plaintiffs bring error.

Affirmed.

Hatchett and Semple, for Plaintiffs in Error.

Wm. G. Davisson, for Defendant in Error.

OPINION BY STEPHENSON, C.: Emma Patterson was duly enrolled on the approved Mississippi Choctaw rolls as of one-eighth Indian blood, and died intestate on or about the 14th day of May, 1906, in the central district of the Indian Territory. She left surviving her as her next of kin W. M. Patterson, her husband, a white person and non-citizen, and the following children, as of the ages shown on May 14th, 1906: Dorroth A. McFarland, *nee* Patterson, age 12 years; Shelby A. Patterson, age 9 years; Howell M. Patterson, age 6 years; J. Allen Patterson, age 3 years; and Ruby E. Patterson, age 1 year. The children were duly enrolled on the approved Mississippi Choctaw Indian Rolls as of ⅛ Indian blood. The deceased did not receive her distributive share of the allotable lands during her lifetime, and W. M. Patterson as administrator of her estate made the selection of her allotment of lands, which are involved in this action. The greater portion of the land was located in the Southern district. W. M. Patterson was appointed guardian of the minor children

by the U. S. District Court of the Central district, holding its terms at Durant. On the 24th day of April, 1907, W. M. Patterson as the guardian of the minor children filed his petition in the U. S. Court for the Southern district, holding its terms at Ardmore, praying an order for the sale of the minors' interest in the allotment made for their mother by the administrator. On the 2nd day of May, 1907, the U. S. Court entered its order directing the guardian to sell the minors' interest in the land. The guardian filed his report of the sale of the minors' interest. On the 5th day of Oct., 1907, W. M. Patterson as the guardian of the minors executed a guardian's deed pursuant to the sale, conveying the allotment of the decedent to U. S. Joines. W. M. Patterson has not at any time attempted to make a conveyance of any interest in the land, in his own right, to the defendant or to any other person. On the 14th day of July, 1913, the county court of Carter County entered its order confirming the sale of the lands in question to U. S. Joines. On Aug. 5th, 1913, W. M. Patterson as guardian for the persons named as minors, executed and delivered his guardian's deed to the defendant, which purported to convey the interest of all the children named as minors in and to the lands in question. By the advent of Statehood, the county court of Bryan county succeeded the U. S. District court of the Central district in the jurisdiction of the guardianship case, and the case has been pending in the county court of Bryan county at all times. On Feb. 21, 1920, W. M. Patterson and the children of the decedent, who were the issues of the marriage of W. M. Patterson and the decedent, commenced their action against U. S. Joines as the purchaser of the allotment of the decedent, through the proceedings recited herein to quiet title to the allotment in the plaintiffs. In the trial of the cause, judgment went for the defendant and against the plaintiffs. The plaintiffs have appealed the cause to this court for review on account of certain proceedings

had in the trial court, and for reversal submit the following propositions of law:

(a) That the U. S. District Court of the Southern District at Ardmore did not have jurisdiction to order the sale of land inherited by the minors;

(b) That the order of confirmation entered by the County Court of Carter County was void for the lack of jurisdiction;

(c) That the plaintiff W. M. Patterson acquired a courtesy interest in the land.

The trial of this cause was submitted to the court upon an agreed statement of facts. There is no question of fraud involved in the case. The agreed statement of facts presents but two questions of law, (a) jurisdiction of the U. S. District Court at Ardmore to take jurisdiction of the cause; and (b) the interest, if any, of W. M. Patterson as the surviving husband of the decedent in the property. As no equitable questions are involved in this case, as made by the agreed statement of facts, the rights among the parties are determined by the statutes and judicial construction placed thereon by the supreme courts of the originating and adopting states.

The following portion of plaintiff in error's brief states the questions of law as made by the appellants:

> "We are aware that Section 3509 of Mansfield's Digest of the Statutes of Arkansas provides 'that the lands of minors may be sold upon obtaining an order for such sale from the court of probate of the county in which such real estate, or the greater part thereof, shall be situated.' But this statutes contemplates that the order of sale shall be obtained in a regular probate proceeding, in the court where the order is made, and does not authorize a guardian appointed in some other county to institute a

proceeding in a court not having jurisdiction of the guardianship case."

The main contention made by the plaintiffs in error, is that the probate court in which the guardianship cause is pending must issue the order of sale. The defendant in error contends that the probate court of the county in which the land or a greater portion thereof is situated, may entertain a petition for the sale of the land, although the guardianship cause may be pending in a probate court in some other county. So, the question involved between the parties, was the jurisdiction of the U. S. Court sitting at Ardmore to order the sale, while the guardianship cause was pending in the U. S. District Court sitting at Durant. By an act of Congress, the probate code as contained in Mansfield's Digest was extended over the Indian Territory and was the law applicable to the sale of the estates of minors at the time the petition was filed for the sale of the land involved in this action. The law is well settled that the presumption is, that the act of the adopting state is intended to include the judicial construction placed upon the statutes by the highest court of the originating state prior to adoption. *Brown* v. *Walker*, 161 U. S. 591, 40 L. ed. 819; *Willis* v. *Eastern Trust and Banking Co.*, 169 U. S. 295, 42 L. ed. 752; *Harrill* v. *Davis*, 168 Fed. 187, 94 C. C. A. 47, 22 L. R. A. (*N. S.*) 1153. Prior to the adoption of the Arkansas Probate Code for application in the Indian Territory, the question of the proper court to order the sale of minors lands was before the Supreme Court of Arkansas and is styled, Reid et al. v. Hart, and reported in 45 Ark. 41. In the Hart case the minors lived in Scott county and the guardianship case was pending in that county. Upon application made by the guardian to the probate court of Clark County the latter court ordered the sale of the minors' land situated in that county. The minors had neither lived in nor had a guardianship

cause pending in Clark County. The grantees of the minors claimed by a conveyance, subsequent to the date of the guardian's deed, and commenced their action in ejectment against the vendee at the guardianship sale. It was the contention of the plaintiffs, that the probate court of Clark County was without jurisdiction to order the sale, and that the decree of sale should have been ordered by the probate court of Scott County. The statutes fixing venue as applied to the sale in the Hart case, required the guardian to make application for sale to the 'proper probate court.' There was not any act relating to venue, other that the Legislative act first referred to. In arriving at the meaning of the general phrase 'proper probate court,' the court said that in many instances it was likely that the lands of the minors would be situated in a county other than the place of residence. Hence, the purpose in the use of the general phrase, in order that venue might be given to the probate court of the county in which the land was situated. Before the cause was heard in the Supreme Court, the Legislature adopted Mansfield's Code which amended the former venue statute by providing that the decree of sale should be made by the probate court of the county in which the land was situated. The provision as amended, is designated as Section 3569, in Mansfield's Digest. The court pointed to the amended section as evidence that the Legislature in the first instance, by the use of the general phrase, intended that venue should be fixed in the probate court of the county in which the land was situated. We refer to the Legislative act as a venue statute, as the constitution vested all probate courts of the state with general probate jurisdiction, which is true as applied to the county courts of the State of Oklahoma. The court made the question, as to the right of the probate court appointing the guardian to order the sale, but said the question would not be passed upon until properly presented for decision. The act of

Congress of May 2nd, 1890 (26 Stat. 94 C. 182), extending that part of Mansfield's Digest over the Indian Territory, in relation to the estates of deceased persons, and minors, provided that the word "county" as used in the laws of Arkansas in their application in the Indian Territory, should be read as "district." Section 3569 Mansfield's Digest provided that the order of sale should be obtained from the probate court of the county in which the real estate, or the greater part thereof was situated. The greater part of the allotment of the decedent was situated in the Southern district. According to the construction placed upon this statute, prior to its adoption, the U. S. Court sitting at Ardmore was a proper court to decree the sale. While the U. S. Court sitting at Durant might have entertained a petition by the guardian for the sale, and ordered the sale, the question is not before us for decision. Apparently, under the provisions of Mansfield's Digest relating to the estates of minors, the Supreme Court of Arkansas has construed the act as fixing venue for the appointment of a guardian for minors, as being in the probate court in the county of the residence of the minor. *Norton* v. *Miller*, 25 Ark. 108; *McHarry* v. *Eatman*, 29 Okla. 50, 116 Pac. 935. In the application of the probate code as contained in Mansfield's Digest, to the estates of minors in the Indian Territory, the courts and Indian Department treated the statute as fixing venue in the probate court for the appointment of a guardian in either the county of residence, or the county in which the land, or the greater part thereof, was situated. This practice was followed from the time the probate code was extended over the Indian Territory until the admission of this state into the Union. Many titles rested upon proceedings had in guardianship causes pending in counties other than the residence of the minors. The practice had been followed so long that it had become to be considered as a rule of property. In view of this situation, when the question came before this court as to the proper court to make

the appointment of a guardian for minors, the statute was construed as authorizing the court sitting in the county of the residence, or in the county in which the greater part of the land was situated, as having authority to make the appointment. *McHarry* v. *Eatman*, *supra*. The holding in *Reid* v. *Hart*, *supra*, was that the probate court of the county in which the land was situated had jurisdiction to order the sale, although the guardianship cause was not pending in that county. The court did not pass upon the question of the jurisdiction of the probate court in which the guardianship cause was pending to decree the sale in *McHarry* v. *Eatman*, *supra*. This court decided in construing the Arkansas statutes that the probate court situated in the county of the residence of the minor, or the probate court of the county in which the land was situated, could lawfully make the appointment of a guardian for the minor. The questions decided by the two decisions are unrelated and the Eatmon case in no manner conflicts with the Hart case. The Eatmon case does not support the plaintiff's contention that the decree of sale must be made by the probate court in which the guardianship cause is pending. The Hart case supports the contention of the defendant that the probate court of the county in which the land is situated may order the sale, although the guardianship cause is not pending in that county. As the act adopting the probate laws of Arkansas included the construction placed thereon by the Hart case, this court is bound by the decision of the originating state. The plaintiffs fall into error in assuming under the Arkansas law, that the guardianship cause must be pending in the court granting the decree of sale, although Section 3589 made the power to enter the decree to depend upon the land being situated in the county of the domicile of the court. It is likely plaintiffs view gave rise to the practice followed in the Indian Territory, from the time of the adoption of the statute, in causing the appointment of guardians, in many instances, in the court

district where the land was situated. According to the statutes relating to the estates of minors, as extended over the Indian Territory, and as construed by the Supreme Court of Arkansas prior to the adoption, the U. S. Court sitting in the southern district was a court of competent jurisdiction to order the sale of the land, although the guardianship cause was pending in the U. S. Court sitting at Durant in the central district. As the U. S. Court sitting at Ardmore had jurisdiction to order the sale of the lands involved in this action at the time of the admission of this state into the Union, the county court of Carter County succeeded to all the jurisdiction which the Federal court held in the case. The county court of Carter County had jurisdiction to proceed with the sale to its completion as fully as if the guardianship cause had been pending in that court. As applied to the particular case, the effect of Section 19 of the Enabling Act (34 Stat. at L. 227), Section 23 of the schedule of the constitution and the statutes of Oklahoma was to fix venue in the county court of both Carter and Bryan counties. *DeWalt* v. *Kline*, 35 Okla. 197, 128 Pac. 121; *Eaves* v. *Mailes*, 25 Okla. 679, 107 Pac. 433; *Davis* v. *Carruthers*, 22 Okla. 323, 97 Pac. 581; *Bailey* v. *Jones*, — Okla. —, —Pac. —. The county court of Carter County was authorized to proceed with the sale until the cause was transferred to the county court of the proper county, in accordance with Session Laws of 1907-8 at page 212, approved March 12th, 1908. The jurisdiction of the sale proceeding acquired by the county court of Carter County, as successor to the U. S. District Court, excluded every other county court from exercising jurisdiction in that particular sale proceeding so long as the cause was pending in the county court of Carter County. *Leonard* v. *Childers*, — Okla. —, 170 Pac. 247; *Crosby* v. *Brewer*, — Okla. —, 158 Pac. 388; *Baird* v. *England*, — Okla. —, 205 Pac. 1098. From the agreed statement of facts, it appears that the order of sale was made in 1907 and a sale and return thereof

was made to the U. S. District Court during the time of the existence of the court. The confirmation was not made by the county court of Carter County until 1913. In respect to the long period of time intervening between the sale and return, and the date of confirmation, we can only say that the statutes do not prescribe the period of time in which the confirmation must be made after the return of sale, and as the interested parties do not complain, it is not for the court to question the matter. No question is made by the agreed statement of facts, as to any claimed irregularities, other than the want of jurisdiction in the U. S. District Court to decree the sale and of the county court of Carter County to confirm the sale. As the plaintiffs do not question the defendant's title upon grounds other than the want of jurisdiction in the two courts, the plaintiffs in error have failed to establish their right of recovery as against the defendant.

In this action, W. M. Patterson, husband of the deceased allottee, claims a courtesy interest of life estate in the lands involved. In answer to Patterson's claim, it is sufficient to say that the allottee did not become seized of the possession, or the right of possession, to the lands in controversy during her life time. In the several states which have given effect to the courtesy right, among the pre-requisite conditions to enjoy the right is the requirement that the wife should become seized of the title, or the right of possession to the particular land during her life time. The allottee did not select her allotment during her life time. She had merely enjoyed the right during her life time to select some particular tract of land from the allotable lands, subject to the conditions and requirements of the allotment acts of Congress. The right of selection grew out of her citizenship status and community rights in the lands of the nation of which she was a member, could not be more than an intangible or invisible property. Such property right could not be termed more

than an incorporeal hereditament or chattel real. *Priddy* v. *Thompson*, 204 Fed. 955. The absence of seizin in the wife during her life time prevented the right of courtesy from attaching to the particular real estate in favor of her husband. *Longest* v. *Langford*, — Okla. —, — Pac. —.

The judgment of the trial court in favor of the defendant being without error upon the agreed statement of facts, upon which the cause was submitted, it is recommended that the judgment be affirmed.

Shackelford and Dickson, CC., concur.

Filed in Supreme Court of Oklahoma Dec. 16, 1924. William M. Franklin, Clerk.

Filed in Supreme Court of Oklahoma, Dec. 29, 1924. William M. Franklin, Clerk.

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA.

W. M. Patterson et al., Plaintiffs in Error, vs. U. S. Joines, Defendant in Error. No. 12,797.

PETITION FOR REHEARING.

Come now the plaintiffs in error and respectfully show to the court that the opinion rendered by this court in the above styled case on December 16, 1924, and the judgment rendered thereon by this court should be set aside and held for naught, and as grounds therefor allege and state:

ONE.

We think the court has overlooked some of the cases and argument advanced in the brief of plaintiffs in error and duly submitted by counsel in the original briefs filed herein. We think this oversight is apparent from the

language used by the learned commissioner in the opinion that has been handed down in this case. The decision does not correctly state the issues before the court as we understand the stipulation and agreed statement of facts upon which the case was tried. From the language embodied in the opinion it would appear that the court reaches the conclusion that the fact that the sale was not confirmed until 1913, and then by the County Court of Carter County, was not an issue in the case and was not complained of by counsel for plaintiffs in error in the lower court nor raised by the briefs in this court.

On page 4 of the opinion rendered by this Court we find the following language:

> "The agreed statement of facts presents but two questions of law, (a) jurisdiction of the United States District Court at Ardmore to take jurisdiction of the cause; and (b), the interest, if any, of W. M. Patterson as the surviving husband of the decedent in the property."

Again on page 9 we have the following language.

> "In respect to the long period of time intervening between the sale and return, and the date of confirmation, we can only say that the statutes do not prescribe the period of time in which the confirmation must be made after the return of sale, and as the interested parties do not complain it is not for the court to question the matter."

We respectfully insist that the court is in error in stating that no question is raised in regard to the long period of time intervening between the sale and date of return and date of confirmation. We think these matters were the very basis of the contest in both the district court and in this Court. On pages 15 and 16 of brief filed in behalf of plaintiffs in error we used the following language:

"Under the decisions to which we have referred, the guardianship sale made of the lands involved herein passed no title until confirmed, and as it is conceded that the confirmation was not had until 1913, the important question to determine is whether or not the confirmation had at Ardmore subsequent to statehood was such a confirmation as would pass title to the lands in question. We call the Court's attention to the fact that the statutes of Oklahoma provide that an order of sale shall not remain in force longer than one year. Section 6566, Revised Laws of 1910, reads as follows: 'No order of sale granted in pursuance of this article (Chapter) continues in force more than one year after granting the same, without a sale being had.'

"We are unable to understand how this sale could be a valid sale when the order of sale was made in 1907, and the order of confirmation was made in 1913. The statute limiting the time during which an order of sale remains in force applies to both public and private sales and is an express prohibition, the language of which is so plain as to be susceptible of but one construction, *and that is that no sale shall be valid unless confirmed within one year.*"

We specifically pointed out that under the laws in force after statehood the sale could not be confirmed except within one year. We quoted the statute applicable to the order of sale and we respectfully insist that the court is in error in saying that no question is raised as to the time intervening between the date of sale and date of confirmation. From the language used by the court in dealing with the question of confirmation, it appears that the court has overlooked all that portion of the brief of plaintiffs in error wherein it is insisted that the sale was void because confirmed several years after the date of the order and confirmed by a court which at that time was absolutely without jurisdiction of any guardianship

case of these minors. The court in this opinion states that the County Court of Carter County inherited jurisdiction by reason of the fact that this particular case was instituted in Federal Court at Ardmore prior to statehood. In this connection we call the court's attention to the fact that the County Court of Bryan County inherited jurisdiction of the probate case from the Federal Court and has never been divested of that jurisdiction in any proceeding to transfer the case to Carter County or to abate the case pending at Durant. There was never any guardianship case, according to the agreed statement of facts, pending in the United States Court at Ardmore wherein W. M. Patterson was guardian of these minors. The only jurisdiction that that court had was by reason of a petition filed by a guardian whose appointment was made in the Central District, and the only authority of W. M. Patterson to act as guardian was by virtue of the authority granted by the Federal Court at Durant. It is our opinion that the County Court of Bryan County inherited jurisdiction from the Federal Court, and the County Court of Carter County could not have inherited jurisdiction for the reason that there was never any probate case pending in that district prior to statehood.

The case of *DeWalt* v. *Kline* and other cases referred to by the court dealing with cases which had been instituted prior to statehood, are cases where there were proceedings instituted in the Federal Court prior to statehood as original probate proceedings. When statehood came there was no probate case pending on the docket of the Federal Court at Ardmore wherein these minors were under guardianship, but there was a case pending in the Federal Court at Durant and acting on the authority of that appointment W. M. Patterson, as guardian, had filed his petition to sell lands in the Southern District. That a confirmation of the sale was absolutely indispensable to its validity is clear from both the decisions of this court and of the Supreme Court of the

State of Arkansas. We call the court's attention to those cases cited in the original brief, filed in behalf of plaintiffs in error, which hold that a confirmation is necessary.

In the case of *Apel* v. *Kelsey*, 47 Ark. 419, quoted in our original brief, it is said:

> "But, so far as appeared, the sale had never been confirmed.
>
> "Now, a judicial sale passes no title until it is confirmed; and confirmation will not be presumed, but must be shown."

To the same effect is the case of *Alexander* v. *Hardin*, 54 Ark. 480, wherein the court uses plain, explicit and unmistakable language. In speaking of the necessity of a confirmation it is said:

> "A guardian's deed, executed in pursuance of an unconfirmed guardian's sale, passes no title."

Again in *Lumpkins* v. *Johnson*, 61 Ark. 60, it is said:

> "The guardian's sale, without confirmation by the probate court, passed no title."

This court has in a number of cases adhered to the same rule and practically the same language appears in all of the cases since *Eaves* v. *Mullen*, 25 Okla. 679, down to the case of *Drennan* v. *Harris*, 161 Pac. 781, and the other recent cases. In the case of *Lumpkins* v. *Johnson*, Mr. Justice Hayes, in speaking of the necessity of a confirmation, said:

> "A valid decree of confirmation of the sale was necessary to pass title to the purchaser at the same."

In *Drennan* v. *Harris*, it was said:

> "The order of sale and the order of confirmation

are both judicial acts and these two orders concurring make a judicial sale."

Assuming that the Federal Court at Ardmore had the authority under the Arkansas statute in force prior to statehood to entertain a petition to sell lands, still it is apparent from the record here that the order of sale rendered by that court remained dormant until 1913, when the purchaser filed a return of the same and an order was rendered confirming it by a court which then had no case pending upon its dockets wherein a guardian was authorized to act for these minors. We do not understand on what theory of law the County Court of Carter County could confirm a sale when it is conceded that there was no probate case on its dockets, nor any case which it had inherited from the Federal Court prior to statehood.

If the court adheres to the rule announced in *Parmenter* v. *Rowe*, 200 Pac. 683, and the case of *State* v. *Hazlewood*, 81 Okla. 69, the County Court of Carter County was without jurisdiction to confirm the sale for the reason that the County Court of Bryan County was the court that succeeded to the jurisdiction that had theretofore existed in the Federal Court, and the County Court of Bryan County had exclusive jurisdiction coextensive with the state. These matters are admitted as we understand the agreed statement of facts, and were argued and insisted upon in the briefs filed in the lower court and in the briefs filed in this court.

We respectfully insist that the court overlooked the argument advanced by counsel for the plaintiffs in error on these questions of law involved in this case. If the County Court of Carter County had succeeded by inheritance to the jurisdiction that had existed in the Federal Court, then we insist that the confirmation could not have been made by that court after the expiration of one year, but in the very nature of things the County Court of Carter County could not act, as we view the

case, for the plain and all-sufficient reason that there was no probate case pending in that court wherein a guardian was authorized to act for these minors. In the original brief filed in behalf of plaintiffs in error the point was made that no case was pending at Ardmore in 1913, or any other time subsequent to statehood, and the language used in the brief on pages 15, 16 and 17 support our statement that we complained of these matters at all times during the history of this case. We respectfully submit that an order of confirmation could not have been entered in 1913, for the reason that no statute of the state authorizes a confirmation after the expiration of one year. As we understand the statute authorizing sales of minors' and deceased persons' estate, an order for private sale is in force for six months and an order for public sale is in force for one year. Section 6566, Revised Laws of 1910, in force when this sale was confirmed in 1913, specifically provides that no order of sale shall remain in force more than one year after the granting of the same without a sale being had.

In the case of *Winters v. Oklahoma Portland Cement Company*, 164 Pac. 988, in speaking of the necessity of an appraisement at private sale, the court used the following words:

> "The words of this section are expressly prohibitory. They do not simply and only say that an appraisement shall be had, but directly say that the court shall not act except under the given conditions. The inhibition strikes at the power of the court, and leaves no discretion whatsoever in the court."

It might be said with equal force that the County Court of Carter County was without power to confirm the sale for the reason that no order of sale had been entered within one year prior to the date of confirmation of said sale. There was not only no order of sale entered in the County Court of Carter County, but there was no case pending on its dockets giving that court authority

to act. As was said in *Winters* v. *Oklahoma Portland Cement Co.*, the jurisdictional invalidity of the order of confirmation is shown by the record of the sale proceeding, and the court said that where the record in the case affirmatively discloses the facts to be such that the court was without power in such case to make the order or decree it assumes to make, the order or decree is void and is subject to collateral attack. *Roth* v. *Union National Bank*, 160 Pac. 505.

The agreed statement of facts, upon which the case was tried, discloses that W. M. Patterson was acting as guardian of these minors by virtue of his appointment in the Central District, and when statehood came the County Court of Bryan County became the successor to the probate case which had been instituted prior to statehood in the Federal Court at Durant. We do not think there could be such a thing as two courts within the state having the power to exercise control over the estates of these minors at one and the same time. The County Court of Carter County, according to the admissions in the agreed statement of facts, assumed to act at a time when there was not only no case pending upon its dockets, but when there was a case pending in another court within the State of Oklahoma. If the court adheres to the rule announced in this case, it seems to us that it will be necessary to reverse the case of *Parmenter* v. *Rowe* and *State* v. *Hazelwood*, and the other cases which hold that when once a court acquires jurisdiction in a guardianship or administration case, that jurisdiction is co-extensive with the state and exclusive of all other courts.

We respectfully insist that the court is in error in holding that the confirmation of the sale in Carter County in 1913 was a valid order, and that these plaintiffs cannot recover the lands involved herein.

TWO.

The court reaches the conclusion that the surviving husband of Emma Patterson took no interest in the lands that were allotted to her after her death, and that the said W. M. Patterson has no interest in the subject matter involved in this suit. The court cites as an authority *Pridy v. Thompson*, 204 Fed. 953, and *Longest v. Langford*, No. 11,500. We respectfully insist that the rule announced in *Longest v. Langford* is directly in conflict with *Ned v. Countiss*, 84 Okla. 138; *Morris v. Sweeney*, 53 Okla. 163; *Cook v. Childs*, 49 Okla. 321, 152 Pac. 88; *Harris v. Bell*, 235 Fed. 626; *Shulthis v. McDougal*, 170 Fed. 529.

In the case of *Shulthis v. McDougal*, decided by the Circuit Court of Appeals, it is said:

> "If any significance is to be given to it as used in this section, it must be held that the intent of the parties to the agreement was that the land should pass to the same persons and in the same proportions as it would have passed if the child had died seized of it."

Again, on page 532, we have the following language in the same case:

> "Whether the ancestor was actually seized of the property or not in his lifetime, was immaterial. It was the intent of the statute that the property should pass by the same right and in the same manner that it would have passed if the person enrolled had survived to receive his allotment. The tribe was not bestowing such land as a bounty, but was simply providing for the right of inheritance."

In this connection we respectfully call the court's attention to the briefs filed in behalf of petitions for rehearing in the case of *Longest v. Langford*, No. 11,500, in which case counsel for the plaintiff in error in this

court have appeared as counsel and filed a brief in that case, and we respectfully invite a reading of the brief and authorities cited in behalf of the first and second petitions for rehearing in case No. 11,500. We do not feel that it is necessary to restate here and repeat what will be found in the briefs and arguments filed in that case, but we think the court is in error in the rule announced in *Longest v. Langford*, and that the error has been perpetuated in the opinion handed down in the present case.

We respectfully insist that the opinion rendered by the learned commissioner in this case should be set aside, and that the plaintiffs in error should be awarded judgment for all relief prayed for herein.

Hatchett & Semple,
Attorneys for Plaintiffs in Error.

Filed in Supreme Court of Oklahoma, Jan. 7, 1925. William M. Franklin, Clerk.

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

W. M. Patterson et al., Plaintiffs in Error, vs. U. S. Jones, Defendant in Error. No. 12,797.

Order Denying Petition for Rehearing.

The plaintiffs in error, who are minors, resided with their father, W. M. Patterson, prior to statehood, in what is now Bryan County. W. M. Patterson was appointed guardian of the plaintiffs in error by the Federal Court, sitting at Durant, in the Central District. The minors owned inherited lands situated in the Southern District, and in what is now Carter County. The guardian made application to the Federal Court prior to statehood for the sale of the lands situated in the Southern District, the application being made to the Federal Court, sitting in

the Southern District at Ardmore. The court at Ardmore ordered the sale of the lands, the land was sold under the order of the court and return made by the guardian of the sale of the land and filed in the court prior to statehood and in the early part of 1907. The cause in connection with the sale of the land was pending in the Federal Court, sitting at Ardmore, when statehood came into existence. The Enabling Act and Section 23 of the schedule of the constitution vested jurisdiction of the subject matter in the County Court of Carter County and provided that the latter court should succeed the Federal Court, sitting at Ardmore in the Southern District, in the exercise of the jurisdiction then being administered by the Federal Court.

Section 13 of Article 7, and Section 12 of Article 7, in the nature of a limitation to Section 13, *supra*, granted jurisdiction to the County Court of Bryan County over the same subject matter, in that the sections authorized the County Court of Bryan County to appoint guardians for minors residing in the county and authorizing the court to sell lands owned by such minors. The guardianship cause of the plaintiffs in error was pending at all times mentioned herein in the Federal Court, sitting at Durant in the Central District, and in the County Court of Bryan County. The County Court of Carter County, in 1913, confirmed the sale made under order of the Federal Court, sitting at Ardmore, and the guardian executed his deed to the defendant in error pursuant to the order of confirmation.

The plaintiffs in error rested their right to recover upon the single proposition that the Carter County Court did not have jurisdiction of the subject matter. The plaintiffs in error assert that the County Court of Bryan County had exclusive jurisdiction of the subject matter. The plaintiffs in error reach this conclusion by asserting that the pendency of the cause in Bryan County had the effect of destroying the constitutional grant of jurisdic-

tion to the County Court of Carter County. The Federal Court, sitting at Ardmore, was authorized to entertain an application to sell the land, although the guardianship cause was pending in a Federal court in another district. *Reed* v. *Hart*, 45 Ark. 41.

The answer to the contention of the plaintiffs in error that the pendency of the cause in Bryan County destroyed the constitutional grant of jurisdiction to Carter County is that the constitutional grant of jurisdiction to both courts was made without limitations. The constitution does not provide that the exercise of jurisdiction by one of the courts shall destroy the constitutional grant of jurisdiction to the other court. The plaintiffs in error in their petition for rehearing now say that the delay between the sale and return and the order of court confirming the sale destroyed the jurisdiction. The answer to this is that the constitution does not so provide in granting jurisdiction. But the truth is the plaintiffs in error are now raising questions by collateral attack which cannot avail as the Carter County Court had jurisdiction. The plaintiffs in error made the test the question of Carter County Court not having jurisdiction. Since the latter court had jurisdiction of the subject matter by constitutional grant, it follows that their contention is not true.

It is recommended that petition for rehearing be denied.

J. W. Shackleford, Commissioner.

Filed in Supreme Court of Oklahoma, Jan. 9, 1925. William M. Franklin, Clerk.

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA.

W. M. Patterson et al., Plaintiffs in Error, vs. L. S. Joines, Defendant in Error. No. 12,797.

SECOND PETITION FOR REHEARING.

Come now the plaintiffs in error and for their second petition for rehearing respectfully show to the court:

That the opinion rendered by the court in this cause on December 16, 1924, should be amended, set aside and reversed and a judgment rendered herein in behalf of the plaintiffs in error, and as grounds therefor these plaintiffs in error respectfully show to the court:

FIRST.

That the court denied petition for rehearing in this cause on January 7th, 1925, at a time when the plaintiffs in error had an application pending for oral argument of said petition for rehearing and without having had an opportunity to consider the questions of law presented by said petition as fully as plaintiffs in error believe that said questions should be considered by the court.

That the opinion rendered by the learned commissioner and filed herein on December 16, 1924, contains an erroneous statement of the contentions of plaintiffs in error and overlooks material parts of the brief of plaintiffs in error, and these matters could not have been considered as fully and as carefully as the said questions warrant in the original petition for rehearing filed herein, and that said original petition for rehearing was denied without any action having been taken upon the application for oral argument which has been filed by plaintiffs in error.

SECOND.

Plaintiffs in error further respectfully show to the court that the language embodied in the opinion as filed

herein discloses that the court reached the conclusion announced in the case without being aware of the fact that the plaintiffs in error contended that the sale confirmed at Ardmore, Oklahoma, in 1913, was void because the County Court of Carter County at that time did not have pending upon its dockets a probate case wherein said minors had a guardian acting for them, and because more than one year had elapsed since the date of the order of sale. Plaintiffs in error believe the law to be that the court is without jurisdiction to confirm a guardianship sale after the expiration of one year from the date of the order of sale as to public sales and six months from the date of the expiration of an order for private sale. Plaintiffs in error show to the court that the confirmation in this case was made in 1913, whereas, the order of sale on which it was based was made by the Federal Court prior to statehood.

In this connection plaintiffs in error respectfully ask that the court reconsider the cases cited by plaintiffs in error in the first petition for rehearing filed herein. Plaintiffs in error further state that in addition to the authorities heretofore cited, they expect to file, and will file, at as early a date as possible further citation of authorities in support of this second petition for rehearing, and plaintiffs in error ask that the application for oral argument heretofore filed in connection with the first petition for rehearing be considered as being filed in support of this petition for rehearing, and that an order be made setting the case for oral argument.

Wherefore, plaintiffs in error pray that the opinion rendered by the learned commissioner in this case be withdrawn, reversed and set aside, and that a judgment be rendered in favor of plaintiffs in error as prayed for herein.

Respectfully submitted,

Hatchett & Semple,
Hayes & McIntosh,
Attorneys for Plaintiffs in Error.

And thereafter, on the 3rd day of February, 1925, there was filed in said cause in the Supreme Court of the State of Oklahoma Journal Entry of Submission, which said journal entry is recorded in Journal No. 12 at page 470, and is in words and figures as follows, to wit:

Supreme Court, December Term, 1924, February 3rd, 1925, Ninth Judicial Day.

United States of America, State of Oklahoma, ss:

Be it remembered that on this Feb. 3, 1925, Supreme Court convened pursuant to adjournment of Jan. 27, 1925.

Present: G. M. Nicholson, Chief Justice; E. P. Branson, C. W. Mason, F. Riley, A. C. Hunt, J. I. Phelps, E. F. Lester and J. W. Clark, Associate Justices; W. M. Franklin, Clerk, and C. B. Hickok, Marshal.

Public proclamation of the opening of court having been made for the transaction of such business as might properly come before it, the following proceedings were had, to wit:

* * * * * * * *

12,797. W. M. Patterson et al., vs. U. S. Joines.

* * * * * * * *

And now on this day the above cause is submitted on the record and briefs filed therein.

* * * * * * * *

Journal 12, page 470.

And thereafter on the 21st day of April, 1925, there was filed in said cause in the Supreme Court of the State of Oklahoma, Journal Entry Granting Petition to Rehear, which said journal entry is recorded in Journal No. 12 at page 501, and is in words and figures as follows, to wit:

Supreme Court, April Term, 1925, April 21st, 1925, Second Judicial Day.

United States of America, State of Oklahoma, ss:

Be it remembered that on this April 21, 1925, Supreme Court convened pursuant to adjournment of Apr. 14th, 1925.

Present: Geo. M. Nicholson, Chief Justice; J. B. Harrison, F. P. Branson, C. W. Mason, F. Riley, A. C. Hunt, J. I. Phelps, E. F. Lester and J. W. Clark, Associate Justices; W. M. Franklin, Clerk, and C. B. Hickok, Marshal.

Public proclamation of the opening of court having been made for the transaction of such business as might properly come before it, the following proceedings were had, to wit:

* * * * * * * *

12,797. W. M. Patterson et al., vs. U. S. Jones.

* * * * * * * *

And now on this day it is ordered by the court that the petition for rehearing, filed in the above cause be, and the same is hereby granted.

* * * * * * * *

Journal 12, page 501.

And thereafter on the 14th day of July, 1925, there was filed in said cause in the Supreme Court of the State of Oklahoma, Journal Entry of Opinion, which said journal entry is recorded in Journal No. 12 at page 535.

Supreme Court, June Term, 1925; July 14th, 1925, Sixth Judicial Day.

United States of America, State of Oklahoma, ss:

Be it remembered that on this July 14th, 1925, Supreme Court convened pursuant to adjournment of July 7th, 1925.

Present: Geo. M. Nicholson, Chief Justice; J. B.

Harrison, C. W. Mason, F. Riley, J. I. Phelps, E. F. Lester, J. W. Clark, Associate Justices; W. M. Franklin, Clerk, and C. B. Hickok, Marshal.

Public proclamation of the opening of court having been made for the transaction of such business as might properly come before it, the following proceedings were had, to wit:

* * * * * * * *

12,797. W. M. Patterson et al., vs. U. S. Joines. Opinion by Clark, J.

* * * * * * * *

And now on this day the above cause comes on for final decision and determination by the court upon the record and briefs filed herein.

And the court having considered the same finds that the judgment of the trial court in the above cause should be reversed and the cause remanded.

It is therefore ordered and adjudged by the court that the judgment of the trial court in the above cause be, and the same is hereby reversed and the cause remanded with directions to proceed consistent with the opinion filed therein.

* * * * * * * *

Journal 12, page 535.

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

W. M. Patterson et al., Plaintiffs in Error, vs. U. S. Joines, Defendant in Error. No. 12,797.

SYLLABUS

1. The surviving husband of a deceased Choctaw Indian woman who was duly enrolled, but died before receiving her allotment, is entitled to curtesy in said lands under the facts stated in the opinion.

2. A guardian appointed for minors by the United States Court of the Central District at Durant, Oklahoma, and said proceedings pending in said court at the time of admission of the state, was, by Section 19 of the Enabling Act, June 16, 1906, and Section 23 of the Schedule of the Constitution, transferred to the County Court of Bryan County, in which was located the court in which the said cause was pending; and the County Court of Bryan County, as successor to the United States Court of the Central District at Durant, acquired jurisdiction of this guardianship matter, with power to sell and convey all lands belonging to said minors within the State of Oklahoma. And this jurisdiction was exclusive of every other county court in the State of Oklahoma.

3. The statute of limitations does not begin to run against the owners of remaining interest in land until the life estate has terminated.

4. Under Section 1479, C. O. S. 1921, which provides: "No order of sale granted in pursuance of this article (chapter) continues in force more than one year after granting the same, without a sale being had." *Held*, that an order of sale made in 1907 by the United States Court at Ardmore and approved and confirmed by the County Court of Carter County on the 14th day of July, 1913, was in violation of this section of the statutes and void and of no force and effect.

Appeal from the District Court of Murray County. T. P. Clay, Judge.

Action by W. M. Patterson et al. against U. S. Joines to quiet title in plaintiffs to real estate described in petition of plaintiffs. The plaintiffs bring error. Reversed.

Hatchett & Semple, attorneys for plaintiffs in error; Wm. G. Davisson, attorney for defendant in error.

Clark, J.

The plaintiffs in error instituted this suit in the

District Court of Murray County against the defendant in error, U. S. Joines, for the recovery of the allotment of Emma Patterson, deceased. The case was tried in the lower court upon an agreed statement of facts.

The facts necessary for the determination of this cause are as follows: Emma Patterson dies intestate on the 14th day of March, 1906, and the lands involved herein were allotted to her after her death. She was survived by her husband, W. M. Patterson, and the following children: Doroth A. McFarland, nee Patterson, 26 years and 8 months old; Shelby A. Patterson, 23 years and 8 months old; Howell M. Patterson, 20 years and 8 months old; J. Allen Patterson, 17 years and 6 months old, and Ruby F. Patterson, 15 years and 3 months old. The above being the age of said plaintiffs on the 20th day of December, 1920. The petition alleged that W. M. Patterson took the life estate in the land of his deceased wife, and that the children of the said Emma Patterson inherited the fee simple title to said land, subject to the life estate of W. M. Patterson, the said children being of one-eighth Indian blood, and the said W. M. Patterson is not of Indian blood.

The defendant answered and denied that said W. M. Patterson, husband of said Emma Patterson, was one of the heirs of the said Emma Patterson, aforesaid, as in said petition charged, or that he was entitled to a life estate in said land. The defendant admitted that the children above named were the heirs of the said Emma Patterson. Further answering, the defendant said that the lands described in plaintiffs' petition were filed after the death of the said Emma Patterson, and asserted title to said land by virtue of a guardian's deed executed on the 5th day of October, 1907, by said W. M. Patterson, as guardian of the Patterson children. And further answering, the defendant claimed ever since the 5th day of October, 1907, to have been in possession of said land; and that thereafter, and on about the 5th day of August,

1913, in order to correct said errors of description of said former deed, a subsequent deed was executed by the said W. M. Patterson, as guardian, in favor of this defendant; that said conveyances were duly, orderly and regularly approved by the probate court having jurisdiction of said estate, and were in all things sufficient to, and did, convey all the titles of the said heirs of Emma Patterson to this defendant. Defendant further answering, and by the way of estoppel against W. M. Patterson, pleaded that the said W. M. Patterson held himself out as guardian of the said minor children aforesaid, and represented to the defendant that said children were the sole heirs of the said Emma Patterson, deceased, and that by reason thereof he was estopped from setting up any claim or any interest in and to said land. Defendant pleaded the Statute of Limitations, Section 4654, the laws of the State of Oklahoma 1910, and also Section —, Mansfield's Digest of the law of Arkansas.

It appears from the agreed statement of facts that W. M. Patterson was appointed guardian of the above named Doroth A. McFarland Patterson on December —, 1904, and of Shelby A. Patterson and Howell M. Patterson on the 19th day of September, 1904, and of J. Allen Patterson and Ruby E. Patterson on the 22nd day of April, 1907, in the United States District Court of the Central District of Indian Territory at Durant. And that on the 24th day of April, 1907, W. M. Patterson, as duly qualified and acting guardian of the persons and estates of the above named minors, filed in the United States Court for the Southern District of Indian Territory at Ardmore, a petition for the sale of the lands involved in this litigation. That on the 2nd day of May, 1907, the United States Court, sitting at Ardmore, Indian Territory, in said Southern District, entered its order authorizing said guardian to sell said land. That on the 8th day of October, 1907, said W. M. Patterson, as guardian of said minors, filed in the United States

District Court at Ardmore, his report of the sale, which shows that W. M. Patterson, as such guardian, sold said lands on the 5th day of July, 1907, to the defendant, U. S. Joines, for the sum of $2,580 and requested that said sale be confirmed. On the 5th day of October, 1907, W. M. Patterson, as guardian of said minors, executed a guardian deed to the defendant, U. S. Joines. The agreed statement of facts further show that on the 14th day of July, 1913, the County Court of Carter County of the State of Oklahoma, entered an order confirming sale of said real estate by said guardian, and that on the 5th day of August, 1913, W. M. Patterson, as guardian of said minors, executed a guardian deed of said land to said defendant, U. S. Joines.

The trial court's conclusions of law are as follows:

"I find that W. M. Patterson, upon the death of his wife, Emma Patterson, acquired a life estate or estate by curtesy in the land in controversy. I find further that the interest acquired by him is barred by the seven years' statute of limitations of the Arkansas law then in force in the Indian Territory, the lands having been sold and report thereof having been made in 1907, prior to the time said Territory became a part of the State of Oklahoma.

"Second. I further find that by the acts and conduct of said W. M. Patterson, that he was estopped to bring this action by reason of his conduct in putting defendant in possession at the time of sale of his wards' interest and allowing him to remain in possession for fourteen years without complaint.

"Third. I find that the Southern District of the Indian Territory had jurisdiction to authorize the guardian's sale and the confirmation thereof by the County Court of Carter County was not void, and that plaintiffs are not in position to attack the same collaterally.

"Fourth: I find that the minor heirs were authorized to sell through their guardian without joining any adult heirs, there being no adult heirs at that time.

"Fifth: I find that all adult heirs, to wit: Doroth A. McFarland and Shelby Patterson are barred by the statute of limitations and resolve all issues in favor of the defendant."

The court rendered judgment for the defendants, and plaintiffs prosecute error to this court.

The first question in this case: "Did W. M. Patterson, the husband of Emma Patterson, take an estate by curtesy in said land?" This land was allotted to Emma Patterson by virtue of the Act of Congress, approved July 1, 1902, known as the Supplemental Agreement. Section 22 of said act provides:

"If any person whose name appears upon the rolls, prepared as herein provided, shall have died subsequent to the ratification of this agreement, the lands to which such person would have been entitled if living shall be allotted in his name, and shall, together with his proportionate share of other tribal property, descend to his heirs according to the laws of descent and distribution as provided in Chapter 49 of Mansfield's Digest of the Statutes of Arkansas."

In the case of *Shulthis v. McDougal et al.*, 95 C. C. A. Reports 615, the Circuit Court of Appeals had this act of Congress under consideration and in the body of the opinion said:

"Whether the ancestor was actually seized of the property or not in his lifetime, was immaterial. It was the intent of the statute that the property should pass by the same right and in the same manner that it would have passed if the person enrolled had survived to receive his allotment."

In the case of *Ned et al. v. Countiss et al.*, 84 Okla. 138, 203 Pac. 168, this Court, speaking through Mr. Justice Nicholson in the second syllabus of said opinion, said:

> "The law of descent in force at the date of the certificate of allotment to a member of the Choctaw Tribe of Indians is the governing law, and this law relates back to the death of the Indian entitled to take the allotment, and identifies the heirs as of that date, and such law should be applied as if the deceased had received title to his allotment and died seized thereof."

In the case of *Morris et al. v. Sweeney et al.*, 53 Okla. 163, 155 Pac. 537, by Mr. Justice Hardy, the first syllabus reads as follows:

> "The surviving husband of a deceased full-blood Mississippi Choctaw Indian woman who was duly enrolled, but who died before receiving patent to her allotment, is entitled to curtesy in said lands, under the facts stated in the opinion."

W. M. Patterson having been lawfully married to Emma Patterson, and children having been born alive of the marriage, he would be entitled to an estate by curtesy in the allotment of his deceased wife, under the law in force at the date of her death. *Johnson et al. v. Simpson*, 40 Okla. 413, 139 Pac. 129; *Pierce et al. v. Ellis et al.*, 51 Okla. 719, 152 Pac. 340; *Cook et al. v. Childs et al.*, 49 Okla. 321, 152 Pac. 88.

The next proposition: "Did the guardian deed, executed by W. M. Patterson on the 5th day of October, 1907, convey any interest in said lands to the defendant, U. S. Jones?" We think not, for the reason that the sale had not been confirmed, and before the guardian could execute a valid deed said sale must be confirmed. And it is agreed in this case that the only confirmation of sale of said land was by the County Court of Carter County on the 14th day of July, 1913. In the case of

Reed et al. v. Hart, 45 Ark. 41, the third syllabus reads as follows:

> "Sales of real estate under orders of the probate court pass no title until confirmed by the court. The recital of confirmation in the purchaser's deed is *prima facie* evidence of the fact, if the deed be properly acknowledged and recorded."

So this deed being executed without any confirmation of sale by the United States Court of the Southern District at Ardmore, was void and of no effect and passed no title to the lands involved herein.

The question is raised by plaintiffs in error that the United States Court of the Southern District at Ardmore did not have jurisdiction to order the sale of this land, for the reason that the guardian was appointed by the United States Court of the Central District at Durant, and said guardianship matters at all times were pending in said court. We think this case can be disposed of without passing on this question.

The next question: "Did the County Court of Carter County have jurisdiction to confirm this sale?" Which order of confirmation was made on the 14th day of July, 1913, and in pursuance thereto a guardian deed was executed on the 5th day of August, 1913. No authorities have been called to our attention that passes squarely on this proposition. Here we are confronted with two courts of the State of Oklahoma as successors to the Federal Court, which had jurisdiction of these matters prior to statehood. The County Court of Bryan County, as a successor to the United States Court of the Central District at Durant, succeeded to and became vested with jurisdiction of this guardianship matter that was pending in the Federal Court of the Central District prior to statehood.

In the case of *Harvey v. Mullen*, 25 Okla. 679, 107 Pac. 433, in the first syllabus this court said:

"A guardianship proceeding pending in one of the United States courts of the Indian Territory at the time of admission of the state was, by Section 19 of the Enabling Act (Act June 16, 1906, c. 3335, 34 Stat. 277), and Section 23 of the Schedule of the Constitution, transferred to the county court of the county in which was located the court in which the case was pending."

Under this holding the County Court of Bryan County, as successor to the United States Court of the Central District at Durant, acquired jurisdiction of this guardian and guardianship matter, with power to sell and convey all lands belonging to said minors within the State of Oklahoma. And this jurisdiction was exclusive of every other county court in the State of Oklahoma.

It is contended by the defendant in error that the County Court of Carter County was the successor to the Federal Court in this sale proceeding. To agree with this contention would mean that two county courts in Oklahoma would have jurisdiction of the same minors and jurisdiction to sell the same tract of land. With this contention we cannot agree.

The procedure provided by the Arkansas statutes in force before statehood in the Indian Territory provided that sale of minors' land should be made by the court in whose jurisdiction the land lay. This was an ancillary proceeding to the main guardianship matter, was a matter of procedure for the sale of land by guardian. And as the sale had not been consummated and confirmed by the United States Court prior to statehood, we are of the opinion that after statehood and the laws of Oklahoma became effective, that this procedure was changed, and that the County Court of Carter County was without jurisdiction to confirm said sale. For the reason that the County Court of Bryan County has exclusive jurisdiction of this guardianship matter

Section 1479, C. O. S. 1921, same being Section 6566 Rev. Laws of 1910, reads as follows:

> "No order of sale granted in pursuance of this article (chapter) continues in force more than one year after granting the same without a sale being had."

This section of the statutes was in force and effect at the date the County Court of Carter County attempted to confirm this sale. Approximately six years having elapsed since this attempted sale, and as no sale had been confirmed, no sale had been consummated; and the action of the county court in attempting to confirm the sale made six years prior to the date of confirmation, was a contravention of this statute. We are of the opinion that the order of the confirmation made by the County Court of Carter County on the 14th day of July, 1915, is void and of no effect, and that the deed made in pursuance thereof on the 5th day of August, 1913, is void and of no effect.

It is next contended by the defendants in error that W. M. Patterson was barred by the seven years' statute of limitations provided for in Mansfield's Digest. With this contention we cannot agree. For the reason that the agreed statement of facts show that W. M. Patterson had made no deed to any interest that he owned in said real estate, and that the purported guardian deed of October 8, 1907, having been executed without said sale being approved and confirmed by the court, was absolutely void on its face and did not attempt to convey any interest of W. M. Patterson, and was insufficient to convey any title or to set the statute of limitations in operation as to W. M. Patterson.

It is next contended that certain of the plaintiffs who had attained majority are barred by the statutes of limitations of Oklahoma. Having held that W. M. Patterson, the husband, took the curtesy right in the land of his deceased wife, then would the statute of limitations

run against the children who took the remainder? In the case of *Orthwein* v. *Thomas*, 127 Ill. 554, 11 Am. St. Rep. 159, the Supreme Court of Illinois in discussing a case parallel with the facts in this case said:

> "Until the death of the life tenant, no statute of limitations began to run against the heirs of Susannah Osborn or their grantees; and laches can only be imputed to them from the time their right of entry accrued."

Jackson v. *Johnson*, 15 Am. Dec. 433.

We therefore must conclude that the statute of limitations does not begin to run against the plaintiffs who own the remainder interest in said land until the life estate has terminated.

The cause is therefore reversed and remanded, with direction to enter judgment for plaintiffs.

Mason, Phelps, Lester, Hunt and Riley, JJ., concur.

Filed in Supreme Court of Oklahoma, July 14, 1925. William M. Franklin Clerk.

CERTIFICATE OF CLERK.

I, William M. Franklin, Clerk of the Supreme Court of Oklahoma, do hereby certify that the foregoing 9 pages, numbered from 1 to 9 inclusive, is a full, true and complete copy of the opinion of said Court in the above entitled cause, as the same remains on file in my office.

In Witness Whereof, I hereunto set my hand and affix the seal of said Court, at Oklahoma City, this 4th day of February, 1926.

WM. M. FRANKLIN,

(Seal) *Clerk of the Supreme Court of Oklahoma.*

(Filed in Supreme Court of Oklahoma Jul. 27, 1925. William M. Franklin, Clerk.)

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

W. M. Patterson et al., Plaintiffs in Error, vs. U. S. Joines, Defendant in Error. Case No. 12,797.

Petition of Defendant in Error for Rehearing.

Comes now U. S. Joines, defendant in error in the above styled cause, and respectfully represents to the Court that on the 14th day of July, 1925, a decree and judgment was rendered by this court in said cause reversing the judgment of the trial court and the former judgment of this court herein rendered affirming the judgment of said trial court, and by said judgment resolving all issues in favor of the plaintiff in error and against the defendant in error.

(a) In said last mentioned judgment this court held in effect that the surviving white husband of a deceased Choctaw Indian woman who died on the 14th day of May, 1906, prior to selecting or receiving her allotment of tribal lands, and prior to statehood, and whose allotment was selected and filed by her husband as administrator after her death, and who at the time of her death left surviving a number of children by said white husband, had a life estate by courtesy in said allotment of said deceased wife.

(b) The court further held in effect that where prior to statehood a guardian was appointed by the United States Court for the Central District of Indian Territory sitting at Durant, and where pursuant to the Arkansas Statute the said guardian so appointed went into the United States Court for the Southern District of Indian Territory sitting at Ardmore and instituted proceedings for the sale of lands belonging to said minors and situated in said Southern District, and where after all proceedings looking to the sale of said property had been had except the entry of the order of confirmation when statehood intervened, that the Coun-

ty Court of Carter County as the successor in jurisdiction to the said Federal Court for the Southern District of Indian Territory did not succeed to the jurisdiction of said Federal court to confirm said sale, but that the County Court of Bryan County sitting at Durant succeeded to such jurisdiction, and that the order of the County Court of Carter County purporting to confirm such sale was an absolute nullity.

(c) The court further held in effect that in the sale of the guardianship lands involved in this action the order confirming such sale must have been made within one year after the date of the order of sale, and that if not so made there was no sale and that an order of confirmation entered after the expiration of said one year is an absolute nullity.

(d) The court further held in effect that where the plaintiff in error, Wm. M. Patterson, acting as guardian of the minor children of Emma Patterson, the allottee, purported to sell the lands involved herein to the defendant in error in July, 1907, and then and there accepted from such defendant in error the purchase price of said land, and the defendant in error then and there went into possession of said lands and remained in undisputed possession thereof continuously from July, 1907, down to the present date, that the Arkansas seven year statute of limitations did not run as against the claim of the said W. M. Patterson to a life estate in said land.

(e) The court further held in effect that the statute of limitations did not run as against the claim of the other plaintiffs in this action aside from W. M. Patterson, whose interest in said land had been conveyed by the said W. M. Patterson as guardian, and which said plaintiffs came of full legal age more than two years prior to the filing of this action in the lower court.

(f) Now, your petitioner respectfully represents that in arriving at the conclusions hereinbefore set forth

your Honorable Court overlooked questions decisive of the case, and duly submitted by counsel, as follows, to wit:

1st. In holding that the plaintiff in error, W. M. Patterson, had a life estate in the lands involved in this action, the court overlooked and failed to consider the proposition specifically raised in the pleadings of the defendant in error and wholly supported by the evidence in this case, that W. M. Patterson is estopped to have or to maintain this action against the defendant in error or to now assert or claim a life estate in said property, for the reason that during the year 1907 he held out to the defendant in error, and to the world at large, that the children of Emma Patterson, for which he was the legal guardian, and who are the other plaintiffs in error in this case, were the owners of said property; he did not claim or assert in his own name a life estate or any other interest therein and he sold the said lands to the said defendant in error as the property of the said minor children of the said Emma Patterson, and accepted from the defendant in error the purchase price thereof in the sum of $2,000.00, and thus misled the said defendant in error to his prejudice and caused him to part with the purchase price of said lands, and therefore if the said W. M. Patterson ever had any right to a life estate in said property he is estopped by his own conduct and by his own actions to now assert such title or interest.

(g) Your petitioner further respectfully represents that said decision rendered by this court on the 14th day of July, 1925, conflicts both with express statutory and constitutional provisions, and with former controlling decisions of this court which have been overlooked by the court in arriving at its conclusions herein, as follows, to wit:

1st. The court overlooked the plain and specific provisions of Sections 3509, 3510 and 3511 of Mans-

field's Digest of the Statutes of Arkansas, which were the statutory provisions governing the guardianship sale in question prior to statehood, and under which the United States Court for the Southern District of Oklahoma alone had jurisdiction to make a sale of the lands of minors located in said Southern District. These provisions read as follows:

> "Sec. 3509. When it shall appear that it would be for the benefit of a ward that his real estate, or any part thereof, be sold or leased, and the proceeds put on interest, or invested in productive stocks or in other real estate, his guardian or curator may sell or lease the same accordingly upon obtaining an order for such sale or lease from the court of probate of the county in which such real estate, or the greater part thereof, shall be situate.
>
> "Sec. 3510. To obtain such order, the guardian or curator shall present to the court a petition setting forth the condition of the estate and the facts and circumstances on which the petition is founded.
>
> "Sec. 3511. If, after a full examination on the oath of creditable and disinterested witnesses, it appears to the court that it would be for the benefit of the ward that the real estate, or any part of it, should be sold or leased, the court may make an appropriate order for such sale or lease, under such regulations and conditions, subject to the provisions of this chapter in relation to the sale of real estate of minors, as the court shall consider suited to the case, first requiring the guardian or curator to enter into good and sufficient bonds to make such leases and conduct such sales with fidelity to the interest of his ward and faithfully to account for the proceeds of such sales and leases according to law and as the order of the court may require."

2nd. The court overlooked and failed to consider the specific provisions of Sections 19 and 20 of the

Enabling Act under which the State of Oklahoma was admitted as a state, which read as follows, to wit:

"Sec. 19. Courts of Original Jurisdiction, Dockets, Etc. That the courts of original jurisdiction of such state shall be deemed to be the successor of all courts of original jurisdiction of said territories and as such take and retain custody of all records, dockets, journals, and files of such courts except in causes transferred therefrom, as herein provided; the files and papers in such transferred cases shall be transferred to the proper United States Circuit or District Court, together with a transcript of all book entries to complete the record in such particular case so transferred.

"Sec. 20. That all causes, proceedings and matters, civil or criminal, pending in the District Courts of Oklahoma Territory, or in the United States Courts in the Indian Territory, at the time said territories become a state not transferred to the United States Circuit or District Courts in the State of Oklahoma, shall be proceeded with, held and determined by the courts of said state, the successors of said District Courts of the Territory of Oklahoma, and the United States Courts of the Indian Territory, with the right to prosecute appeals or writs of error to the supreme or appellate court of said state, and also with the same right to prosecute appeals or writs of error from the final determination in such cases made by the supreme or appellate court of such state to the Supreme Court of the United States, as is provided by law for appeals and writs of error from the supreme or final appellate court of a state to the Supreme Court of the United States. All criminal cases pending in the United States Courts in the Indian Territory not transferred to the United States Circuit or District Courts in the said State of Oklahoma shall be

prosecuted to a final determination in the State Courts of Oklahoma, under the laws now in force in that territory."

3rd. The court also overlooked and failed to consider the preamble to the schedule to the Constitution of the State of Oklahoma, and Sections 1, 2 and 23 of the schedule to the Constitution, which read as follows, to wit:

"In order that no inconvenience may arise by reason of a change from the forms of government now existing in the Indian Territory and in the Territory of Oklahoma, it is hereby declared as follows:

"Section 1. No existing rights, actions, suits, proceedings, contracts, or claims shall be effected by the change in the forms of government, but all shall continue as if no change in the forms of government had taken place. And all processes which may have been issued previous to the admission of the state into the Union under the authority of the Territory of Oklahoma, or under the authority of the laws in force in the Indian Territory, shall be as valid as if issued in the name of the state.

"Section 2. All laws in force in the Territory of Oklahoma at the time of the admission of the state into the Union, which are not repugnant to this constitution, and which are not locally inapplicable, shall be extended to and remain in force in the state of Oklahoma until they expire by their own limitation or are altered or repealed by law.

"Section 23. When this Constitution shall go into effect the books, records, papers and proceedings of the probate court in each county, and all causes and matters of administration and guardianship, and other matters pending herein shall be transferred to the county court of such county except of Day County, which shall be transferred to

the County Court of Ellis County, and the county courts of the respective counties shall proceed to final decree or judgment, order, or other termination in the said several matters and causes as the said probate court might have done if this constitution had not been adopted. The District Court of any county, the successor of the United States Court for the Indian Territory, in each of the counties formed in whole or in part in the Indian Territory, shall transfer to the county court of such county all matters, proceedings, records, books, papers and documents appertaining to all causes or proceedings relating to estates; Provided, that the legislature may provide for the transfer of any of said matters and causes to another county than herein prescribed."

4th. The court overlooked and failed to consider the former decision of this court in the case of *Longest v. Langford et al.*, being cause Number 11,500, decided by the Supreme Court of the State of Oklahoma on July 24, 1923, and involving the identical question of curtesy involved in the case now before the court. This is the only case by the Supreme Court directly in point on the question of curtesy; it was specifically pointed out by defendant in error in his brief, but has been overlooked by the court in arriving at its decision herein.

5th. The court overlooked and failed to consider the specific provisions of Section 22 of the Choctaw-Chickasaw Supplemental Agreement, 32 U. S. Statutes 641, extending in force in the Indian Territory the provisions of Chapter 49 of Mansfield's Digest of the Statutes of Arkansas, and it further overlooked the specific provisions of Chapter 49 of Mansfield's Digest of the Statutes of Arkansas as so extended.

6th. The court also overlooked and failed to consider the specific provisions of the statute of limitations governing the maintenance of this action by W. M. Patterson, to wit:

Sections 4471, 4474 and 4476 of Mansfield's Digest of the Laws of Arkansas, which read as follows:

"Sec. 4471. No person or persons, or their heirs, shall have, sue or maintain any action or suit, either in law or equity, for any lands, tenements or hereditaments but within seven years next after his, her or their right to commence, have or maintain such suit shall have come, fallen or accrued; and all suits either in law or equity for the recovery of any lands, tenements or hereditaments shall be had and sued within seven years next after title or cause of action accrued, and no time after said seven years shall have passed."

"Section 4474. All actions against the purchaser, his heirs or assigns, for the recovery of lands sold at judicial sales shall be brought within five years after the date of such sale, and not thereafter; saving to minors and persons of unsound mind the period of three years after such disability shall have been removed."

"Section 4476. No action for the recovery of real property, when the plaintiff does not claim title to the lands, shall be brought or maintained when the plaintiff, or his testator or intestate, has been five years out of possession."

7th. The court overlooked and failed to consider the plain provisions of Section 6566 of the Revised Statutes of Oklahoma of 1910, and in holding that the date of the guardianship sale would be the date of the order of confirmation, and in this respect the court has further overlooked its own repeated holdings, and its controlling decisions in the following cases, to wit:

Shoals v. *Freeland*, 91 Okla. 238, 217 Pac. 176.
Morrison v. *Burnett*, 154 Fed. 617.
Snell et al. v. *Conard et al.*, 95 Okla. 145, 218 Pac. 813.

8th. **The court overlooked and failed to consider** the former holdings and controlling decisions of this court on the question of the running of the Statute of Limitations as to Doroth A. Patterson and Shelby A. Patterson in the case of *Wray v. Howard et al.*, 79 Okla. 223, 192 Pac. 584, and *Glory v. Bagby et al.*, 79 Okla. 155, 188 Pac. 881, in both of which cases this court held:

> "Where a minor's property has been sold at a void or fraudulent guardian's sale, and a guardian's deed executed and filed of record, and such grantee and those claiming under him remain continuously in possesison thereof thereafter, the minor's cause of action is not barred by reason of subdivision 2, section 4655, Rev. Laws 1910, within five years after the recording of the deed, but by virtue of Section 4656, Rev. Laws 1910, the minor may begin an action to set aside said sale at any time prior to two years after his legal disability is removed."

Wherefore, defendant in error prays that a rehearing of said cause may be granted by your Honorable Court.

Wm. G. Davisson,
Attorney for Defendant in Error.

We acknowledge service of a copy of the within petition for rehearing and of defendant in error's brief in support thereof, and of application for oral argument, on this 24th day of July, 1925.

Hatchett & Semple,
Attorneys for Plaintiffs in Error.

And thereafter on the 22nd day of December, 1925, there was filed in said cause in the Supreme Court of the State of Oklahoma Journal Entry submitting for oral argument, which said Journal Entry is recorded in Journal No. 12 at page 580, and is in words and figures as follows, to wit:

Supreme Court, December Term, 1925, December 22nd, 1925. Third Judicial Day.

United States of America, State of Oklahoma, ss.

Be it Remembered, that on this Dec. 22, 1925, Supreme Court convened pursuant to adjournment of Dec. 15th, 1925.

Present: G. M. Nicholson, Chief Justice; F. P. Branson, J. B. Harrison, F. Riley, A. C. Hunt, J. I. Phelps, E. F. Lester and J. W. Clark, Associate Justices; W. M. Franklin Clerk, and C. B. Hickok, Marshal.

Public proclamation of the opening of court having been made for the transaction of such business as might properly come before it, the following proceedings were had, to wit:

. . . . . .

12797 W. M. Patterson, et al. vs. U. S. Joines.

. . . . . .

And now on this day the above cause is argued orally and submitted on the record, briefs and oral argument.

Journal 12, Page 580.

And thereafter on the 12th day of January, 1926, there was filed in said cause in the Supreme Court of the State of Oklahoma Journal Entry denying Petition for Rehearing, which said Journal Entry is recorded in Journal No. 12, at page 584, and is in words and figures as follows, to wit:

Supreme Court, December Term, 1925, January 12th, 1926. Fifth Judicial Day.

United States of America, State of Oklahoma, ss.

Be it Remembered, that on this Jan. 12, 1926, Supreme Court convened pursuant to adjournment of Jan. 5, 1926.

Present: G. M. Nicholson, Chief Justice; F. P. Branson, C. W. Mason, F. Riley, A. C. Hunt, J. I. Phelps, E. F. Lester and J. W. Clark, Associate Justices; W. M. Franklin, Clerk, and C. B. Hickok, Marshal.

Public proclamation of the opening of court having been made for the transaction of such business as might properly come before it, the following proceedings were had, to wit:

* * * * * * * * * *

12797. Patterson et al. vs. Joines.

* * * * * * * * * *

And now on this day it is ordered by the court that the petition for rehearing filed in the above cause be, and the same is hereby denied.

* * * * * * * * * *

Journal 12, page 584.

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

W. M. Patterson et al., Plaintiffs in Error, vs. U. S. Joines, Defendant in Error. Case No. 12,797.

PETITION FOR STAY OF MANDATE PENDING REVIEW BY THE SUPREME COURT OF THE UNITED STATES.

Comes now the defendant in error, U. S. Joines, and respectfully shows to the court that the decision and judgment of this Honorable Court in the above styled and numbered cause involves numerous Federal questions.

That the lands involved in this action were a part of the allotable lands of the Choctaw and Chickasaw Tribes of Indians, and that said lands were allotted pursuant to the treaties, regulations and acts of Congress and departmental regulations governing the al-

lotment and distribution of such lands, and that the determination of the issues herein involved, the construction and application of said federal statutes relating to the allotment, descent and distribution of said lands, the construction of the statutes of the State of Arkansas extended in force in the Indian Territory by Federal enactment prior to the formation of the State of Oklahoma, the construction of Federal acts pertaining to the territorial government of Indian Territory and the sale of lands by guardianship proceedings therein, the construction of the Federal act known as the Enabling Act under and by virtue of which Oklahoma became a state and was admitted into the Union, the construction of certain provisions of the Constitution of the State of Oklahoma enacted pursuant to the provisions of the Enabling Act aforesaid, and the determination of the right, title and interest acquired by defendant in error under and pursuant to the Federal statutes and treaties aforesaid.

Your petitioner further shows to the court that the decision of this court in this cause is against the title, rights and privileges in the allotted lands acquired and claimed by this defendant in error by virtue of the provisions of the Federal Statutes, Treaties and Laws aforesaid, and by reason thereof it is the intent and purpose of this defendant in error to immediately proceed by writ of error or certiorari to have said cause reviewed by the Supreme Court of the United States of America.

Wherefore, your petitioner hereby gives legal notice of his intent as aforesaid, and respectfully prays that the Mandate herein be stayed for a period of sixty days to give this petitioner time to have the record in said cause prepared and lodged in the Supreme Court of the United States, in manner and form as provided by law and the rules of said court, and that thereafter

said Mandate be stayed pending the final determination of this cause in said court, and pursuant to its orders.

U. S. Joines,
Defendant in Error.
By Wm. G. Davisson,
Attorney for Defendant in Error.

Filed in Supreme Court of Oklahoma Jan. 18, 1926. William M. Franklin, Clerk.

And thereafter on the 26th day of January, 1926, there was filed in said cause in the Supreme Court of the State of Oklahoma Journal Entry Staying Mandate, which said Journal Entry is recorded in Journal No. 12, at page 590, and is in words and figures as follows, to wit:

Supreme Court, December Term, 1926, January 26th, 1926. Seventh Judicial Day.

United States of America, State of Oklahoma, ss.

Be it Remembered, that on this Jan. 26, 1926, Supreme Court convened pursuant to adjournment of Jan. 19, 1926.

Present: G. M. Nicholson, Chief Justice; J. B. Harrison, F. P. Branson, C. W. Mason, F. Riley, A. C. Hunt, J. I. Phelps, E. F. Lester and J. W. Clark, Associate Justices; W. M. Franklin, Clerk, and C. B. Hickok, Marshal.

Public proclamation of the opening of court having been made for the transaction of such business as might properly come before it, the following proceedings were had, to wit:

. . . . . .

12797. Patterson et al. vs. Joines.

And now on this day it is ordered by the court that

the mandate of this court in the above cause be, and the same is hereby stayed pending appeal to the Supreme Court of the United States, for a period of 60 days.

* * * * * * * * * * *

Journal 12, page 588.

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

W. M. Patterson, Doroth A. McFarland, *nee* Patterson, Shelby A. Patterson, and Howell M. Patterson, J. Allen Patterson and Ruby E. Patterson, Minors, by their next friend, W. M. Patterson, Plaintiffs in Error, vs. U. S. Joines, Defendant in Error. Case No. 12,797.

PRAECIPE FOR TRANSCRIPT

To the Clerk of the Above Entitled Court:

You are hereby requested to make a complete transcript of the record of this cause to be used in an application to the Supreme Court of the United States for Writ of Certiorari in said cause; the record to consist of:

(a) The complete record on appeal from the trial court to the Supreme Court of Oklahoma.

(b) The opinions of the Supreme Court of the State of Oklahoma filed therein.

(c) All journal entries contained in the records and proceedings of the Supreme Court of the State of Oklahoma relating to said cause.

(d) All motions for rehearing in said cause and the judgment of the court thereon.

(e) The petition and order staying mandate in said cause.

(f) The final judgment and decision of the Supreme Court of the State of Oklahoma.

And any other documents necessary to make said record full and complete as required by the rules of the Supreme Court of the United States, whether enumerated herein or not.

You will further attach to said record your certificate that it is a full and complete record in said cause.

Dated this the 28th day of January, 1926.

Wm. G. Davisson,
Attorney for U. S. Joines.

Filed in Supreme Court of Oklahoma Jan. 29, 1926. William M. Franklin, Clerk.

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

CLERK'S CERTIFICATE

I, William M. Franklin, Clerk of the Supreme Court of the State of Oklahoma, do hereby certify that the foregoing 155 pages, numbered from 1 to 155, inclusive, is a true and complete transcript of the record and all proceedings in the said Supreme Court of Oklahoma in the case of W. M. Patterson et al. vs. U. S. Jones, Number 12,797, as the same remains upon the files and records of said Supreme Court.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of said Supreme Court, at the City of Oklahoma City, Oklahoma, this the 4th day of February, 1926.

WM. M. FRANKLIN,
Clerk of the Supreme Court of Oklahoma

IN THE SUPREME COURT OF THE UNITED STATES.

U. Sherman Joines, Petitioner, vs. William M. Patterson, Doroth A. McFarland, *nee* Patterson, Shelby A. Patterson, and Howell M. Patterson, J. Allen Patterson and Ruby E. Patterson, minors, by their next friend, William M. Patterson, Respondents. Case No. ——

Acknowledgment of Service of Transcript.

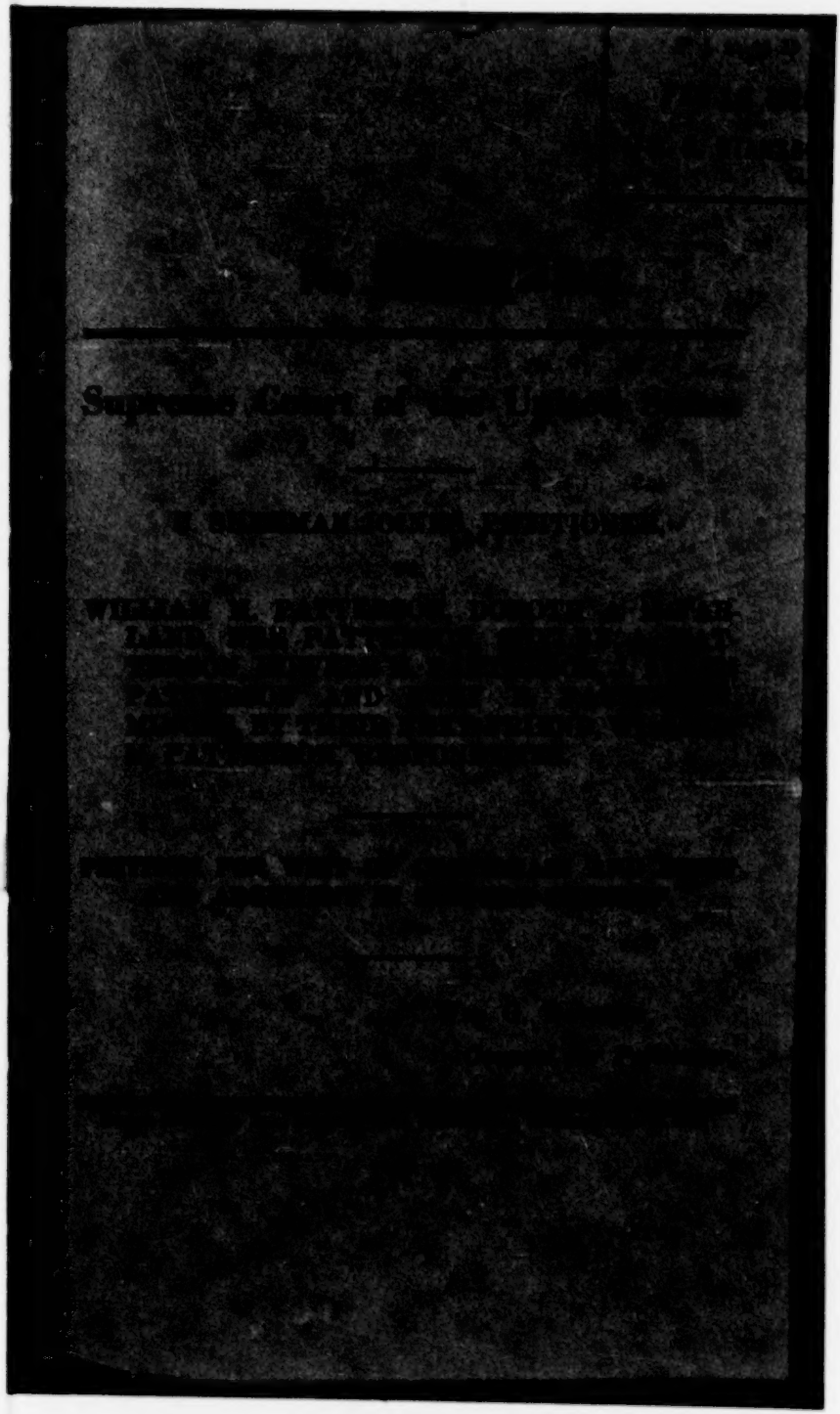
We, the undersigned, attorneys for the respondents and each of them, do hereby acknowledge service on us of a copy of the attached and foregoing transcript in the above styled and numbered cause, on this the —— day of February, 1926.

HAYES & McINTOSH,
HATCHETT & SEMPLE,
Attorneys for Respondents.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed March 15, 1926

The petition herein for a writ of certiorari to the Supreme Court of the State of Oklahoma is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.



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Supreme Court of the United States

U. SHERMAN JOINES, PETITIONER,

vs.

WILLIAM M. PATTERSON, DOROTH A McFARLAND, NEE PATTERSON, SHELBY A. PATTERSON, HOWELL M. PATTERSON, J. ALLEN PATTERSON AND RUBY E. PATTERSON, MINORS, BY THEIR NEXT FRIEND, WILLIAM M. PATTERSON, RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF OKLAHOMA.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner, U. Sherman Joines, respectfully shows to the Court that on the 26th day of May, 1921, there was a judgment rendered in the District Court of Murray County in the State of Oklahoma in favor of your petitioner and against the respondents, adjudging, in effect, that this petitioner was the legal owner of the following lands and premises, to wit:

The east half of the northeast quarter and the east half of the west half of the northeast quarter and the northwest quarter of the southwest quarter of the north

east quarter and the west half of the northwest quarter of the northeast quarter, and the north half of the northwest quarter and the northeast quarter of southeast quarter of Section 31, Township 1 South, Range 1 West, and also the west half of the northwest quarter of the southeast quarter of Section 8, Township 2 South, Range 1 West, containing 280 acres, more or less, according to the United States Survey thereof, located and situated in Murray County, State of Oklahoma,

and

The west half of the northeast quarter of the northeast quarter of Section 27, Township 2 South, Range 6 West, containing 20 acres, more or less, according to the United States Survey thereof, located and situated in Stephens County, State of Oklahoma,

and

The north half of the northwest quarter of the northeast quarter and the southwest quarter of the northwest quarter of the northeast quarter and the southeast quarter of the southeast quarter of Section 12, Township 2 South, Range 2 West of the Indian Base Meridian, located and situated in Carter County, State of Oklahoma, containing 70 acres, more or less, according to the United States Survey thereof.

Also further adjudging that the respondents herein had no right, title or interest in or to said lands

From the aforesaid judgment by the District Court of Murray County, Oklahoma, an appeal was prosecuted by the respondents to the Supreme Court of the State

of Oklahoma, and on the 14th day of July, 1925, the said Supreme Court of the State of Oklahoma rendered a judgment in said cause reversing the said judgment of the District Court of Murray County, which said judgment by the Supreme Court of the State of Oklahoma is in favor of the respondents above named and against your petitioner, and which judgment, in effect, holds that the respondents are the owners of the lands hereinbefore mentioned and described, and that this petitioner has no right, title or interest in or to the same.

Your petitioner further shows that after the rendition of said judgment by the Supreme Court of Oklahoma, and, to wit: On the 27th day of July, 1925, your petitioner filed a petition for rehearing, and that thereafter on the 12th day of January, 1926, an order was made by said Supreme Court of Oklahoma denying said petition for rehearing, and thereupon an opinion was filed in this cause by said court disaffirming and reversing the judgment of the District Court of Murray County, State of Oklahoma, which opinion is a part of the record in this cause.

Your petitioner further contends that in the rendition of its judgment aforesaid, and in its proceedings therein, the Supreme Court of Oklahoma committed certain errors to the prejudice of the rights of your peti-

tioner involving Federal questions, all of which will more in detail appear in the specific assignments of error hereinafter set out in this petition.

Your petitioner further respectfully shows to the Court that the said Supreme Court of the State of Oklahoma is the highest court of said state in which a decision in said cause could be had, and that the errors committed by the said Supreme Court of Oklahoma, and complained of by your petitioner are such as to entitle your petitioner to have the said cause removed to, and reviewed by, the Supreme Court of the United States by writ of certiorari, under the statutes of the United States authorizing the review of the decisions of the highest courts of the state by the Supreme Court of the United States, and that the Supreme Court of Oklahoma has entered its order in said cause staying the mandate of said court pending the hearing of this petition.

Wherefore, your petitioner, U. Sherman Joines, respectfully presents to this Court this, his petition, for writ of certiorari addressed to the Supreme Court of the State of Oklahoma, and commanding said court and the clerk thereof to certify to this Court the record and proceedings of the case in said court wherein your petitioner was respondent, and the respondents, William M. Patterson, Doroth A. McFarland, nee Patterson, Shelby A. Patterson, Howell M. Patterson, J. Allen Patterson and

Ruby E. Patterson, were appellants, together with the opinion of said court therein, for the purpose of review and determination of said cause by this Court.

For grounds for the issuance of said writ, your petitioner alleges that the Supreme Court of Oklahoma has, by its opinion in this case, decided Federal questions of substance not heretofore decided by the Supreme Court of the United States, or if so decided, not in accord with the applicable decisions of said court; these questions are more specifically pointed out in the following paragraphs from one to eleven, inclusive:

(1). The opinion of the Supreme Court of the State of Oklahoma *shows on its face* that the judgment of said court in favor of the respondents and against this petitioner is predicated and based upon the consideration of Federal questions, and the construction of Federal statutes and the laws of the State of Arkansas extended in force by Federal statutes in Indian Territory prior to the admission of said territory into the Union as a part of the State of Oklahoma, and the provisions of the Federal statute, known as the Enabling Act, under which Oklahoma was admitted as a state of the Union, and the provisions of the Oklahoma constitution, adopted pursuant to and accepting the provisions of said Enabling Act, and that the Federal statutes, questions and enact-

ments so considered and construed by the Supreme Court of the State of Oklahoma are decisive of the issues in this case, and without considering which the Supreme Court of Oklahoma could not have arrived at its judgment herein.

(2). The Supreme Court of Oklahoma misinterpreted Chapters 20 and 49 of Mansfield's Digest of the laws of the State of Arkansas, extended in force by Federal statute enacted May 2, 1890 (26 Statutes 81), in Indian Territory prior to the admission of Oklahoma as a state, in holding that under the provisions of said chapters the respondent, William M. Patterson, a non-citizen white man, took an estate by curtesy in the allotted lands of his deceased wife, a one-eighth blood Mississippi Choctaw Indian, selected and filed by him under Federal Indian allotment laws as her administrator after her death, and prior to the admission of Oklahoma as a state.

(3). The Supreme Court of Oklahoma misconstrued the provisions of the Federal statute enacted May 2, 1890 (26 Stat. 81), extending in force in Indian Territory certain of the laws of the State of Arkansas, and particularly Chapters 20 and 49 of Mansfield's Digest of said laws, and the provisions of the Federal statute known as the Choctaw-Chickasaw Supplemental Agree-

ment, adopted July ., 1902 (32 Stat. 641), and particularly Section 22 of said act, in holding that under the provisions of said acts the respondent, William M. Patterson, a non-citizen white man, took an estate by curtesy in the lands of his deceased wife, a one-eighth blood Mississippi Choctaw Indian, whose allotment was selected and filed by him after the death of his wife as her administrator, and prior to the admission of Oklahoma as a state.

(4). The Supreme Court of Oklahoma misinterpreted the provisions of the Federal statute adopted May 2, 1890 (26 Stat. 81), and the provisions of Chapter 97 of Mansfield's Digest of the laws of Arkansas, extended in force in Indian Territory by said statute, as construed by the Supreme Court of Arkansas, prior to such extension, in *Ferguson* v. *Peden*, 33 Ark. Rep. 150; *Jacks* v. *Chafin et al.*, 34 Ark. Rep. 534, and *Logan et al.* v. *Jelks*, 34 Ark. Rep. 547, and the provisions of the Federal statute, known as the Enabling Act, under which Oklahoma was admitted as a state (34 Stat. 267), in holding that the Arkansas Statute of Limitations extended in force in Indian Territory as aforesaid did not operate to bar the respondent, William M. Patterson's right of action as against this petitioner, if he ever had such right.

(5). That the Supreme Court of Oklahoma misconstrued the provisions of the Federal statute of May 2, 1890 (26 Stat. 81), and the provisions of Chapter 73 of Mansfield's Digest of the Laws of Arkansas, as extended in force in Indian Territory by the Federal enactment aforesaid, and particularly Sections 3509, 3510 and 3511 of said digest, as construed by the Supreme Court of Arkansas prior to such extension, in *Reid et al. v. Hart*, 45 Ark. Rep. 41, and the provisions of the Federal statute, known as the Enabling Act (34 Stat. 267), under which Oklahoma was admitted as a state, and particularly Sections 19 and 20 of said Enabling Act, and the provisions of the Constitution of Oklahoma, adopted pursuant to said Enabling Act, and particularly the provisions of Sections 1, 2, and 23 of the Schedule to said Constitution, in holding that the County Court of Carter County, Oklahoma, did not succeed to the jurisdiction of the United States Court for the Southern District of Indian Territory to confirm the sale by guardian, made under the orders of said United States Court to this petitioner of the lands of the respondents herein, aside from William M. Patterson, prior to the admission of Oklahoma as a state, but not confirmed until after statehood, and in holding that the order of confirmation of said sale entered by the County Court of Carter County, Oklahoma, after statehood was without jurisdiction and a nullity.

(6). That the Supreme Court of Oklahoma misconstrued the provisions of the Federal statute of May 2, 1890 (26 Stat. 81), and the provisions of Chapter 73 of Mansfield's Digest of the laws of Arkansas, and particularly Sections 3509, 3510 and 3511 of said digest, as extended in force in Indian Territory by the Federal enactment aforesaid, and as construed by the Supreme Court of Arkansas, prior to such extension, in the case of *Read et al. v. Hart*, 45 Ark. Rep. 41, and the provisions of the Federal statute, known as the Enabling Act (34 Stat. 267), under which Oklahoma was admitted as a state, and particularly Sections 19 and 20 of said Enabling Act, and the provisions of the Constitution of Oklahoma, adopted pursuant to said Enabling Act, and particularly the provisions of Section 1, 2 and 23 of the Schedule to said Constitution, in holding that the County Court of Bryan County, Oklahoma, alone succeeded to the jurisdiction of the United States Court for the Southern District of Indian Territory to confirm the sale by guardian to this petitioner of the lands involved herein, made by William M. Patterson as guardian of all the other respondents herein, under the orders of the United States Court for the Southern District of Indian Territory, and in further holding that the jurisdiction of the said County Court of Bryan County, Oklahoma, was exclusive of the jurisdiction of the county court of every

other county, and particularly of the County Court of Carter County, to confirm such sale.

(7). That the Supreme Court of Oklahoma misinterpreted the provisions of the Enabling Act providing for the admission of Oklahoma as a state (34 Stat. 267), and particularly the provisions of Sections 19 and 20 of said act providing for the transfer of causes pending in the United States courts of Indian Territory at the time of the admission of the State of Oklahoma, and the provisions of the Constitution of the State of Oklahoma, adopted pursuant to said Enabling Act, and particularly the provisions of Sections 1, 2 and 23 of the Schedule to the Constitution, in holding that by the provisions of said acts the guardianship proceeding for the sale of the lands of the respondents herein, other than William M. Patterson, which was pending in the United States Court for the Southern District of Indian Territory at the time of the admission of Oklahoma as a state, was transferred to the County Court of Bryan County, Oklahoma, and in not holding that said proceeding was transferred by the provisions of said acts to the County Court of Carter County, Oklahoma.

(8). That the Supreme Court of Oklahoma misinterpreted the provisions of the Federal enactment, known as the Enabling Act (34 Stat. 267), under which Okla-

homa was admitted as a state, and particularly Sections 19 and 20 thereof, and the provisions of the Constitution of the State of Oklahoma, adopted pursuant to, and in accepting the provisions of said Enabling Act, and particularly Sections 1, 2 and 23 of the Schedule to said Constitution, and the provisions of the Federal statute, adopted May 2, 1890 (26 Stat. 81), and the provisions of Chapter 73 of Mansfield's Digest of the laws of Arkansas, extended in force in Indian Territory by the Federal enactment last mentioned, in holding that an order confirming the sale by guardian of the lands of the respondents herein, other than William M. Patterson, to this petitioner made under the orders of the United States Court for the Southern District of Indian Territory, must have been confirmed within one year from the date of such sale, and in further holding that the sale would take the date of the order of confirmation instead of the order of confirmation relating back and taking the date of the sale.

(9). The Supreme Court of Oklahoma misinterpreted the provisions of the Federal act of May 2, 1890 (26 Stat. 81), extending in force in Indian Territory Chapter 73 of Mansfield's Digest of the laws of Arkansas, and particularly misinterpreted the provisions of Sections 3509, 3510 and 3511 of said digest, as construed by the Supreme Court of Arkansas prior to the extension

of said chapter to Indian Territory, in the case of *Reed et al.* v. *Hart*, 45 Ark. Rep. 41, in not holding that the United States Court for the Southern District of Indian Territory, being the district in which the lands sought to be sold and involved herein were situated, had exclusive jurisdiction to order and confirm the sale by guardian to this petitioner of the lands of the respondents, other than William M. Patterson, and in not holding that with the coming of statehood the jurisdiction to confirm said sale was by the provisions of the Federal statute, known as the Enabling Act (34 Stat. 267), and particularly Sections 19 and 20 of said act, and the provisions of the Consitution of Oklahoma, adopted pursuant to said act, and particularly Sections 1, 2 and 23 of the Schedule to said Constitution, transferred to the County Court of Carter County, Oklahoma, as its successor in jurisdiction, to complete by confirmation the sale previously had in the said Federal Court by the Southern District.

(10) When by Act of May 2, 1890 (26 Stat. 81), Congress extended in force in Indian Territory the provisions of Chapters 73 and 97 of Mansfield's Digest they carried with them the prior constructions of said statutes by the Supreme Court of the State of Arkansas, and such constructions had the force of Federal law, and the constructions necessarily placed upon said chapters by the Supreme Court of Oklahoma in this case are in con-

flict with said prior constructions thereof by the Supreme Court of Arkansas in the case of *Reid et al.* v. *Hart*, 45 Ark. Rep. 41, and in the cases of *Ferguson* v. *Peden*, 33 Ark. Rep. 150; *Jacks* v. *Chafin et al.*, 34 Ark. Rep. 534, and *Logan et al.* v. *Jelks*, 34 Ark. Rep. 547.

(11). The Supreme Court of Oklahoma misconstrued the provisions of the Federal statute of May 2, 1890 (26 Stat. 81), and of Chapters 20 and 49 of Mansfield's Digest of the laws of Arkansas, extended in force in Indian Territory by the Federal act aforesaid, in holding that William M. Patterson took a life estate by curtesy in the lands of Emma Patterson, and further misconstrued the provisions of Chapter 97 of Mansfield's Digest of the laws of Arkansas, extended in force in Indian Territory by the Federal act aforesaid, in holding that the Arkansas Statute of Limitations, plead by this petitioner as a defense in this action, did not operate to terminate such life estate, if he did take one, and by reason of such misinterpretation of said statutes it reached the conclusion that there was outstanding in the said William M. Patterson an intervening life estate, which prevented the running of the Oklahoma Statute of Limitations as against the respondents, Doroth A. Patterson and Shelby A. Patterson, who attained full age more than two years prior to the filing of this suit in the trial court, and against whom the Oklahoma Statute of Limitations was plead as a defense.

In this behalf your petitioner states the following additional facts:

(a). The lands involved in this action were a portion of the tribal lands of the Choctaw-Chickasaw Tribes of Indians.

(b). Emma Patterson was a one-eighth blood Mississippi Choctaw Indian; she was the wife of William M. Patterson, one of the respondents herein, and the mother of all of the other respondents herein; she was entitled to an allotment in the tribal lands of said tribes of Indians, but died on the 14th day of May, 1906, in what was then the Central District of Indian Territory, without having selected her allotment.

(c). William M. Patterson, the husband of Emma Patterson and the father of all of the other respondents herein, was a non-citizen white man, and immediately after the death of Emma Patterson he, as her administrator, selected and filed in her name and as her allotment the lands involved in this action.

(d). At the time of the death of Emma Patterson, and at the time of the purchase by the petitioner of the lands involved herein, the respondents, Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, J. Allen Patterson and Ruby E. Patterson, were minors, and prior to the purchase of said lands by this petitioner,

their father, William M. Patterson, was appointed as the guardian of their persons and estates by the United States Court for the *Central District* of Indian Territory, sitting at Durant in what after statehood became Bryan County, Oklahoma, being the district in which they then resided, and was at the time of said sale the duly and legally qualified and acting guardian for all of said respondents.

(e). The lands involved in this suit were all situated in what was then the *Southern District* of Indian Territory, and on the 24th day of April, 1907, before statehood, William M. Patterson, as guardian for his minor children, being all of the other respondents herein, filed in the United States Court for the said *Southern District* of Indian Territory, sitting at Ardmore, in what after statehood became Carter County, Oklahoma, his petition to sell the lands involved herein, which petition was granted and an order of sale was entered by said United States Court for the Southern District of Indian Territory.

(f). Thereafter the said William M. Patterson, pursuant to said order, caused said lands to be duly appraised and advertised for sale, and sold said lands to the petitioner, U. Sherman Joines, on the 5th day of October, 1907, he executed a deed for said lands to U.

Sherman Joines, and on the 8th day of October, 1907, filed in the said United States Court for the Southern District of Oklahoma a full and complete report of sale, showing the sale of said lands under said order of said court to U. Sherman Joines; further showing that he had received from the said Joines the full consideration therefor; that he had executed a deed for said lands, and requested that an order of confirmation be entered by said court.

(g). U. Sherman Joines took possession of said lands on the 5th day of October, 1907, before statehood, and has been in open adverse possession ever since; he had been in such for more than twelve years prior to the filing of this suit in the trial court.

(h). Prior to statehood the guardianship files pertaining to the *appointment* of William M. Patterson as guardian were in the *United States Court for the Central District of Indian Territory*, sitting at Durant, and with the coming of statehood were transferred *to the County Court of Bryan County, Oklahoma*, prior to statehood all of the guardianship proceedings *pertaining to the sale of the lands by* William M. Patterson, as guardian of his minor children, being all of the other respondents herein, *were on file in the United States Court for the Southern District of Indian Territory*, being the district in which the lands were located, and

these papers were never at any time on file in the United States Court for the Central District of Indian Territory. With the coming of statehood these papers from the United States Court of the Southern District *were transferred to the County Court of Carter County, Oklahoma, sitting at Ardmore.*

(f). After statehood, and, to wit: On the 14th day of July, 1913, and before any proceedings were had to remove these papers from the County Court of Carter County, Oklahoma, said county court entered its order confirming the guardianship sale made prior to statehood under the orders of the United States Court for the Southern District of Indian Territory. This confirmation being made under the report of sale and petition for confirmation filed in the Federal Court for the Southern District of Indian Territory prior to the transfer of said papers to the County Court of Carter County, but which, through oversight, had not been acted upon at an earlier date.

(g). On the 5th day of August, 1913, William M. Patterson executed a second guardian's deed in favor of this petitioner to the lands involved herein.

(h). The petitioner, U. Sherman Joines, remained in undisputed possession of said lands until the filing of this suit on February 21st, 1929, nearly thirteen years

after the purchase of said lands, and still is in possession of same.

(l). No fraud is alleged or claimed to have been perpetrated; the suit on the part of the respondents is predicated on the theory that William M. Patterson is, and has always been, the owner of a life estate in said lands, and that the other respondents are still the owners of the fee simple title to said lands on the theory that the United States Court for the Southern District of Indian Territory did not have jurisdiction to order the sale, and the County Court of Carter County did not have jurisdiction to confirm said sale, and that therefore the guardian's deed to this petitioner is void and conveys no title.

(m). The defense of this petitioner to said action is based on the fact that the guardianship deed is valid and conveys title to this petitioner, which draws in issue the jurisdiction of the United States Court for the Southern District of Indian Territory, in which the lands were situated, to order the sale; which further draws in issue the question of what court inherited the jurisdiction to confirm, after statehood, the sale previously made under the orders of said Federal Court for the Southern District, but not confirmed before the intervention of statehood, and which further draws in issue the effect of

the order of confirmation made by the County Court of Carter County, Oklahoma, confirming said sale.

(n). As a further defense this petitioner raises the issue that William M. Patterson took no life estate by curtesy in the lands of his deceased wife; the further issue that if he did take such an estate his right to assert it is barred by the Arkansas Statute of Limitations; and the further defense that he is estopped by his own conduct in selling said lands as the lands of his minor children without asserting an interest therein, to now assert such right as against this petitioner.

(o). As a further defense this petitioner pleads the Oklahoma Statute of Limitations as against the respondents, Doroth A. Patterson and Shelby A. Patterson, who attained full age more then two years before the filing of this suit.

(p). As previously stated, the trial court resolved the issues herein in favor of this petitioner; the case was appealed to the Supreme Court of Oklahoma, where it was first affirmed, but later reversed and the issues decided against this petitioner.

(q). The opinion of the Supreme Court of Oklahoma deciding the issues against this petitioner shows on its face that all of the Federal questions set out in the errors hereinbefore complained of have necessarily been passed upon adversely to this petitioner, and reference is hereby specifically made to said petition set out in the

transcript filed herewith, from which it will be seen that these Federal questions have been considered and passed upon by said court, and that jurisdiction is thereby conferred upon the Supreme Court of the United States to review said decision.

(r). Your petitioner, in the brief accompanying this petition, will more particularly elaborate upon the foregoing questions.

(s). Your petitioner further presents herewith a certified copy of the entire record in this cause, including the proceedings in the Supreme Court of the State of Oklahoma, and the opinion of said court.

Wherefore, your petitioner respectfully prays that a writ of certiorari be issued under the seal of this Court, directed to the Supreme Court of the State of Oklahoma, sitting at Oklahoma City, Oklahoma, commanding the said court to certify and to send to this Court on a day to be designated a full and complete transcript of the record and all proceedings of the said Supreme Court of the State of Oklahoma, had in said cause, to the end that said cause may be reviewed and determined by this Honorable Court as provided by law, and that the said judgment of the Supreme Court of the State of Oklahoma be reversed by this Honorable Court, and for such other relief as may seem proper, and your petitioner will ever pray.

Wm. G. Davisson,
Ardmore, Oklahoma,
Counsel for Petitioner.

State of Oklahoma, County of Carter, ss.

Wm. G. Davisson, being first duly sworn, on oath deposes and says that he is the counsel for petitioner, U. Sherman Joines; that he has read the foregoing petition and knows the contents thereof; that he has also read a duly certified copy of the Transcript of Record, which accompanies the petition herein, being the Transcript of Record in the case at bar; that the matters in said petition are, in the judgment of this affiant, duly supported in and by said Transcript of Record; that he knows of the above proceedings had, and that the acts and things in said petition stated are, to the best of his knowledge and belief, true.

Affiant further says that in his opinion the petition is well founded, and that the case is one in which the prayer of the petition should be granted by this Court.

Wm. G. Davisson.

Subscribed and sworn to before me this the 5th day of February, 1926.

(Seal) L. M. Dies, Notary Public.

My commission expires Oct. 16th, 1929.

Supreme Court of the United States

U. SHERMAN JOINES, PETITIONER,

vs.

WILLIAM M. PATTERSON, DOROTH A. McFARLAND, NEE PATTERON, SHELBY A. PATTERSON, AND HOWELL M. PATTERSON, J. ALLEN PATTERSON AND RUBY E. PATTERSON, MINORS, BY THEIR NEXT FRIEND, WILLIAM M. PATTERSON, RESPONDENTS.

BRIEF ON BEHALF OF PETITIONER IN SUPPORT OF PETITION FOR REVIEW BY THE SUPREME COURT OF THE UNITED STATES.

STATEMENT OF FACTS.

This brief is filed in support of a petition for review by the Supreme Court of the United States by way of certiorari, of the final judgment and decision of the Supreme Court of the State of Oklahoma in the above cause, in which decision and final judgment by said court the issues involved were decided against this petitioner and in favor of the respondents.

This action was originally filed in the District Court of Murray County, Oklahoma, by Wm. M. Patterson, Doroth A. McFarland, nee Patterson, Shelby A. Patterson, and Howell M. Patterson, J. Allen Patterson and

Ruby E. Patterson, being the respondents herein, against U. Sherman Joines, your petitioner.

The purpose of this suit was to recover from your petitioner certain lands situated in Murray County, Oklahoma.

The petition in said trial court is set out in the transcript filed herewith (Trans. 5-7). It is alleged in this petition that the lands involved in this action were the allotment of one Emma Patterson, a Mississippi Choctaw Indian of one-eighth blood; that said Emma Patterson died intestate in what is now Bryan County, Oklahoma, in the year 1906; that the respondent William M. Patterson was the husband of the said Emma Patterson, and that the other respondents herein were the children of the said Emma Patterson and William M. Patterson; by reason of which relationship William M. Patterson claims a life estate by curtesy under the Arkansas laws in force in Indian Territory prior to statehood, and the other respondents claim the fee simple title, subject to said life estate, to the lands involved herein, all claiming as the heirs of Emma Patterson, deceased.

By said petition it is further alleged that your petitioner, U. Sherman Joines, has been in adverse possession of all of said lands, using and occupying the same, since July 5th, 1907.

Respondents further ask that they be adjudged to be the sole owners of the lands involved, and that your petitioner be adjudged to have no right, title or interest therein.

By way of defense to this action, your petitioner, by his answer filed in the trial court (Transcript 11), and by his amended answer (Transcript 39), admits that he has been in undisputed possession, claiming the ownership of said lands at all times since the month of October, 1907. He admits that the lands in question were allotted to Emma Patterson; that she was a one-eighth blood Mississippi Choctaw Indian; that she died intestate in what was then the Central District of Indian Territory, on or about the 14th day of May, 1906; that at the time of her death she left surviving her William M. Patterson, her husband, and Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, J. Allen Patterson and Ruby E. Patterson, her children.

Your petitioner, by said answer, denies, however, that William M. Patterson was an heir of his wife, Emma Patterson, or that he took a life estate in said lands.

Your petitioner admits that the other respondents above named were the heirs of the said Emma Patterson, and that they inherited from her the lands involved in this action.

It is further contended and alleged in said answer that Emma Patterson died before selecting her allotment as a member of the Choctaw Chickasaw Tribes of Indians, and that said allotment was selected and filed by her husband, William M. Patterson, as administrator of her estate after her death.

It is further alleged in said answer that William M. Patterson was the duly and legally appointed guardian of all of the children of Emma Patterson, aforesaid; that said children were minors, and that as such guardian, the said William M. Patterson, by due and legal probate proceedings duly and regularly had, sold and conveyed the lands herein to your petitioner on or about the 5th day of October, 1907, and that thereafter and on or about the 5th day of August, 1913, still acting as such guardian, the said William M. Patterson made a second deed to your petitioner, both of which are attached to said answer as exhibits and set out (Transcript 14).

Your petitioner further alleges that said conveyances by said guardian were duly and regularly ordered and approved by the probate court having jurisdiction of said guardianship sale, and attaches to his answer the petition for sale, order of sale and report of sale made and filed in the Southern District of Indian Territory, where the lands were located (Transcript 25-36, inc.), and the confirmation of sale made by the County Court of Carter County, Oklahoma (Transcript 36-38).

As a further defense to said action, your petitioner by said answer especially pleads that the respondent, William M. Patterson, is estopped by his conduct in holding out said lands and selling them to this petitioner as the lands of his minor children to now assert a life estate therein.

He further especially pleads that if the said respondent, William M. Patterson, ever had any right to a life estate in said lands that it is barred by the Arkansas Statute of Limitations in force at the time when this petitioner went into open adverse possession of said lands.

It is further alleged in said answer that the respondent, William M. Patterson, is a white man; that he was not enrolled as a member of either of the Five Civilized Tribes of Indians; that he was not a citizen of said tribes, and that he was not entitled to any interest in the lands of his deceased wife, either by way of curtesy or as an heir.

It is further alleged in said answer that as to the other respondents, aside from William M. Patterson, their right of action is barred by the Oklahoma Statute of Limitations, which is especially plead as a defense.

It is further alleged that the action itself constitutes a collateral attack on the orders and judgment of the

probate court under which said lands were sold to this petitioner.

By way of reply to the answer of this petitioner (Transcript 23), the respondents especially deny that the United States Court for the Southern District of Indian Territory had jurisdiction to order the sale of the lands of the respondents herein to your petitioner, but admit that in the month of April, 1907, the said William M. Patterson, as guardian of all of the other respondents, filed his petition in the United States Court for the Southern District of Indian Territory, sitting at Ardmore, for the sale of the lands involved in this action; that thereafter, on the 2nd day of May, said petition was heard by said court and said lands were ordered to be sold by said guardian; that thereafter, on the 8th day of October, 1907, the said guardian filed in said court a report of the sale of said lands and that thereafter, and on the 14th day of July, 1913, the County Court of Carter County, State of Oklahoma, entered its order attempting to confirm the sale of said real estate to this petitioner, U. Sherman Joines, but in said reply the respondents contend that all of said orders and proceedings are void, for the reason that the United States Court for the Southern District of Indian Territory was without authority of law to sell the lands belonging to said minors.

By their reply aforesaid, they further contend that the order of confirmation entered by the County Court of Carter County on the 14th day of July, 1913, is void, but do not state on what ground. In said reply it is further alleged that the Arkansas Statute of Limitations does not operate to bar the right of action, as contended by your petitioner.

This case was submitted to the trial court, being the District Court of Murray County, Oklahoma, on the following agreed statement of facts (Transcript 66-70):

"It is hereby agreed by and between the above named plaintiffs by their attorneys, Hayes & McIntosh and the defendant, U. S. Jones, by his attorney, Wm. G. Davisson:

"1. That the following described lands and premises were allotted to Emma Patterson, a Mississippi Choctaw of the one-fourth blood, to wit:

"E½ of the NE¼ and the E½ of the W½ of the NE¼ and NW¼ of SW¼ of NE¼ and W½ of NW¼ of N. E. ¼, and the N. ½ of N. W. ¼ and the N. E. ¼ of S. E. ¼ of Section 31, Township 1 South, Range 1 West, and also the W. ½ of N. W. ¼ of S. E. ¼ of Section 8, Township 2 South, Range 1 West, containing 280 acres, more or less, according to the United States Survey thereof, located and situated in Murray County, State of Oklahoma,

and

The W. ½ of the N. E. ¼ of the N. E. ¼ of Section 27, Township 2 South, Range 6 West, containing 20 acres, more or less, according to the United States Survey

thereof, located and situated in Stephens County, State of Oklahoma,

and

The N. ½ of the N. W. ¼ of the N. E. ¼ and the S. W. ¼ of the N. W. ¼ of N. E. ¼ and the S. E. ¼ of S. E. ¼ of Section 12, Township 2 South, Range 2 West of the Indian Base Meridian, located and situated in Carter County, State of Oklahoma, containing 70 acres, more or less, according to the United States Survey thereof.

"2. That the said Emma Patterson died intestate on or about the 14th day of May, 1906, in what was then the Central District of Indian Territory, and that at the time of her death she left surviving her her husband, W. M. Patterson, and her children, to wit: Doroth A. Patterson, female; Shelby A. Patterson, male; Howell M. Patterson, male; J. Allen Patterson, male, and Ruby E. Patterson, female, which said children were born to the said W. M. Patterson and Emma Patterson in lawful wedlock.

"3. That the lands hereinabove described were filed on and allotted to the said Emma Patterson after her death by the said W. M. Patterson, her husband, as administrator of her estate.

"4. That W. M. Patterson, the husband of said Emma Patterson, was a white person and not on the tribal rolls and not a citizen, and that the said Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, J. Allen Patterson and Ruby E. Patterson were Mississippi Choctaw of the one-eighth blood.

"5. That the children of the said Emma Patterson, plaintiffs herein, were born on the following dates, to wit:

"Doroth A. McFarland, nee Patterson, 9, March 25, 1894.

"Shelby A. Patterson, 6, March 25, 1897.

"Howell M. Patterson, 3, March 25, 1900.

"J. Allen Patterson, May 30, 1903.

"Ruby E. Patterson, September 9, 1905.

And on this the 20th day of December, 1920, are of the following ages, to wit:

"Doroth A. McFarland, nee Patterson, 26 years, 8 months and 25 days.

"Shelby A. Patterson, 23 years, 8 months and 25 days.

"Howell M. Patterson, 20 years, 8 months and 25 days.

"J. Allen Patterson, 17 years, 6 months and 20 days.

"Ruby E. Patterson, 15 years, 3 months and 11 days.

"6. That on the 24th day of April, 1907, W. M. Patterson, as the duly qualified and acting guardian of the persons and estates of the above named minors, filed in the United States Court for the Southern District of the Indian Territory at Ardmore, his petition for the sale of the above described lands, a copy of which petition is hereto attached, made a part hereof and marked Exhibit 'A'; that on the 2nd day of May, 1907, the United States Court, sitting at Ardmore, Indian Territory, entered its order authorizing said guardian to sell said land, a copy of said order is hereto attached, made a part hereof and marked Exhibit 'B'.

"7. That on the 8th day of October, 1907, the said W. M. Patterson, as guardian of said minors, filed in the United States District Court at Ardmore, Oklahoma, his report of sale, a copy of which report of sale is hereto attached, made a part hereof and marked Exhibit 'C'.

"8. That on the 14th day of July, 1913, the County Court of Carter County, State of Oklahoma, entered its order confirming sale of said real estate by said guardian, a copy of which order of confirmation is hereto attached, made a part hereof and marked Exhibit 'D'.

"9. That on the 5th day of August, 1913, W. M. Patterson, as the guardian of said minors, executed a guardian's deed to said lands to said defendant, a copy of which guardian's deed is hereto attached, made a part hereof and marked Exhibit 'E'.

"10. That W. M. Patterson, above named, was appointed guardian of the above named Doroth A. Patterson on December 7, 1904, at Durant in the Central District of the Indian Territory; that the said W. M. Patterson was appointed guardian of Shelby A. Patterson and Howell M. Patterson, above named, on the 19th day of September, 1904, at Durant, in the Central District of the Indian Territory; that the said W. M. Patterson was appointed guardian of J. Allen Patterson and Ruby E. Patterson, above named, on the 22nd day of April, 1907, in the United States District Court of the Central District of Indian Territory at Durant, Oklahoma; that the guardianship of the above named minors was never at any time pending in the Southern District of the Indian Territory or in Carter County, Oklahoma, except in the matter of the sale of said property as herein agreed and shown.

"11. That on the 5th day of October, 1907, W. M. Patterson, as the guardian of said minors, executed a guardian's deed to the said defendant herein, copy of said deed is hereto attached, made a part hereof and marked Exhibit 'F'; that the only order confirming the sale of said lands which was ever made is that shown as Exhibit 'D' to this stipulation.

"12. That the said U. S. Joines took possession of said lands and premises above described and has been

in the peaceful possession of same from on or about the 5th day of October, 1907, until the present time, and is now in the possession of said lands.

"13. That the said W. M. Patterson, husband of said Emma Patterson and father of said above named children, has never at any time executed to U. S. Joines or any other person any deed whatsoever to his individual interest, if any, in and to said lands, and that no adult heirs joined in said sale.

"14. That appraisers were appointed, appraisement was had, bonds were filed, notices were given and sale was held, reports were filed, deeds were executed and confirmation was had at the times, places and in the manner in the orders, reports, deeds and judgment, attached hereto as exhibits, ordered set forth and recited."

The exhibits referred to in the agreed statement of facts, appear in the transcript filed herewith on the following pages:

Exhibit "A", petition of William M. Patterson, guardian, to sell lands involved herein, filed in the Southern District of Indian Territory (Transcript 70).

Exhibit "B", order of the United States Court for the Southern District of Indian Territory, authorizing guardian to sell lands (Transcript 75).

Exhibit "C", report of sale by guardian, filed in United States Court for Southern District of Indian Territory, at Ardmore, Oklahoma (Transcript 78).

Exhibit "D", order of county court confirming sale of real estate by guardian (Transcript 81).

Exhibit "E", guardian's deed by William M. Patterson in favor of U. Sherman Joines (Transcript 83).

Exhibit "F", guardian's deed by William M. Patterson in favor of U. Sherman Joines (Transcript 84).

The judgment of the trial court was in favor of your petitioner and against the respondent (Transcript 95). In its conclusions of law, the trial court finds that any life estate which William M. Patterson may have taken in said lands is barred by the Arkansas Statute of Limitations in force in Indian Territory prior to statehood, and at the time when your petitioner went into possession of said lands.

It further finds that the said William M. Patterson is estopped by his own conduct in selling the lands as the lands of his wards and placing your petitioner in possession thereof to assert an estate by curtesy in himself.

It further finds that the United States Court for the Southern District of Indian Territory had jurisdiction to authorize the guardian's sale by William M. Patterson, as guardian of the other respondents herein; and that the County Court of Carter County, Oklahoma, had

jurisdiction to confirm said sale so authorized by the United States Court, and that respondents cannot attack said sale collaterally.

It further finds that the minor heirs were authorized to sell said lands through their guardian without joining any adult heirs, there being no adult heirs at the time.

And, lastly, it finds that Doroth A. Patterson and Shelby A. Patterson are barred by the Oklahoma Statute of Limitations, pleaded as a defense in said cause, to assert title to said lands; and resolves all issues in favor of your petitioner.

From the judgment of the trial court an appeal was prosecuted by the respondents to the Supreme Court of the State of Oklahoma, which resulted, first, in the affirmation of judgment of the trial court (Trans. 116). A rehearing was denied by the Supreme Court of Oklahoma, but a second application therefor was granted, and on the rehearing thereof the judgment of the trial court and the former judgment of the Supreme Court were reversed and all of the issues were by said judgment resolved in favor of the respondents and against your petitioner. This last opinion of the court, which is the final judgment appealed from, appears in the Transcript at pages 132).

The final judgment of the Supreme Court of Oklahoma, above referred to, was rendered on the 14th day of July, 1925. On the 27th day of July, 1925, your petitioner filed an application for rehearing, which application appears in the Transcript at pages 143-151.

On the 12th day of January, 1926, an order was made by the Supreme Court of Oklahoma denying said petition for rehearing (Transcript 153); whereupon your petitioner filed in said court his petition for stay of mandate (Transcript 153), pending the reviewing of this cause by the Supreme Court of the United States; and on the hearing thereof the Supreme Court of Oklahoma entered its order staying the mandate in said cause, pending such review (Transcript 155-156).

Final Opinion and Judgment of the Supreme Court of Oklahoma.

It will be seen by reference to the final opinion and judgment of the Supreme Court of the State of Oklahoma, which it is sought by this proceeding to have reviewed, as well as from an inspection of the judgment of the trial court, that the decisions of both courts are based upon Federal questions, and that without considering such Federal questions said courts could not have arrived at the conclusions rendered.

The opinion arrived at herein could not have been

reached without determining the Federal question of whether or not the United States Court for the Southern District of Indian Territory, being the district in which the lands sought to be sold were located, had jurisdiction to order and confirm the sale of said lands under the provisions of the laws of the State of Arkansas, as extended in force by Federal enactment in Indian Territory.

Said decision could not have been arrived at without determining whether the County Court of Carter County, sitting at Ardmore, Oklahoma, or the County Court of Bryan County, sitting at Durant, Oklahoma, inherited the jurisdiction of the Federal Court to confirm such sale, statehood having intervened after the sale of the said lands under the orders of the Federal Court, but before the confirmation thereof; and this necessitates the construction of the Federal Enabling Act and the provisions of the Constitution of the State of Oklahoma accepting said act and adopted pursuant thereto.

Said decision could not be arrived at without determining the Federal question as to whether or not under the provisions of the Federal enactments governing the allotment of Indian lands and the descent and distribution thereof, and the provisions of the Arkansas statutes, extended in forced in Indian Territory prior

to statehood, William M. Patterson, a non-citizen white man, would take an estate by curtesy in the lands of his deceased wife of Indian blood, who died in Indian Territory prior to statehood and prior to the selection of her allotment, and whose allotment was selected and filed by her husband, William M. Patterson, as her administrator.

Said opinion could not be arrived at without determining and construing the provisions of the Arkansas Statute of Limitations and the Federal statute, extending the said statute of limitations in force in Indian Territory, in order to determine whether or not the same operated to bar William M. Patterson from asserting such life estate, if as a matter of fact he had one.

Said opinion could not be arrived at without determining the Federal question as to whether or not, under the provisions of the Arkansas laws and the Federal statutes in force in Indian Territory prior to statehood, William M. Patterson took a life estate by curtesy, and, if so, the effect of the Arkansas Statute of Limitations in terminating such estate so that there would be no intervening life estate to prevent the running of the statute of limitations of Oklahoma as against the two minor respondents who had become of age more than two years prior to the filing of this suit.

All of these are Federal questions and the opinion of the Supreme Court of the State of Oklahoma, from which this appeal is prosecuted, discloses on its face that all of these issues were considered and passed upon by that court. That opinion on its face determines that William M. Patterson did have a life estate in said lands by virtue of the provisions of said Federal statutes and the laws of Arkansas extending in force in Indian Territory.

It determines that the Arkansas Statute of Limitations, extended in force by the Federal enactment in Indian Territory, did not run against the respondent, William M. Patterson, so as to operate as a bar to preclude him from setting up said life estate as against your petitioner.

It determines that by reason of the existence of said life estate, and by reason of the fact that the Arkansas statute did not operate as a bar to terminate such estate that there was an intervening life estate, which prevented the Oklahoma statute from running against the minors, Doroth A. Patterson and Shelby A. Patterson, who had attained full age two years prior to the filing of the same.

It determines the Federal question that under the said Federal statutes and the provisions of the laws of

Arkansas, in force in Indian Territory, the United States Court for the Southern District of Oklahoma did not have jurisdiction to order and confirm the sale by guardian of the lands involved herein.

It construes the Federal Enabling Act, by which Oklahoma was admitted as a state, and the provisions of the Oklahoma Constitution, accepting said Enabling Act, and determines that by said act the jurisdiction of the Federal courts to confirm said sale was not handed down to the County Court of Carter County, Oklahoma, but was handed down to the County Court of Bryan County, Oklahoma, to the exclusion of all other counties in the state.

It further determines on its face that the sale of lands herein had, under the orders of the United States Court for Indian Territory, pursuant to the provisions of the Federal statutes and the Arkansas laws extended in force in Indian Territory, must have been confirmed within one year from the date of sale, and that the date of sale would take the date of the order of confirmation instead of the order of confirmation relating back and taking effect as of the date of the sale.

The petition for rehearing filed in the Supreme Court of Oklahoma by your petitioner (Transcript 143) specifically points out to the Supreme Court of Okla-

homa its error in construing the provisions of Mansfield's Digest of the Laws of Arkansas in force in Indian Territory prior to statehood, and particularly Sections 3509, 3510 and 3511 thereof; the error of the court in misconstruing Sections 19 and 20 of the Enabling Act by which Oklahoma was admitted as a state; the error of the court in misconstruing Sections 1, 2 and 23 of the Schedule to the Constitution of Oklahoma; the error of the court in misconstruing the provisions of the Choctaw Chickasaw Supplemental Agreement (32 Stat. 641), and the provisions of Mansfield's Digest referred to therein; the error of the court in misconstruing the provisions of Chapter 97 of Mansfield's Digest, and particularly Sections 4471, 4474 and 4476 thereof, as extended and in force in Indian Territory by Federal enactment; and both in the original brief in this cause in the Supreme Court of Oklahoma and in the argument thereof to said court, in the brief in support of rehearing, and in the oral argument had on the petition for rehearing, all of the Federal questions set forth in the petition for writ of certiorari filed herewith were argued and presented to and considered by the said Supreme Court.

The petition for rehearing was denied, leaving in force the opinion and judgment of the Supreme Court set out at Transcript 132.

Errors Set Out in Petition for Certiorari.

The petition for writ of certiorari sets out eleven alleged errors by the Supreme Court of Oklahoma, and reasons for the review of this cause by the Supreme Court of the United States. These reasons are as follows:

"(1) The opinion of the Supreme Court of the State of Oklahoma shows on its face that the judgment of said court in favor of the respondents and against this petitioner is predicated and based upon the consideration of Federal questions, and the construction of Federal statutes and the laws of the State of Arkansas extended in force by Federal Statutes in Indian Territory prior to the admission of said territory into the Union as a part of the State of Oklahoma, and the provisions of the Federal Statute known as the Enabling Act under which Oklahoma was admitted as a state of the Union, and the provisions of the Oklahoma Constitution adopted pursuant to, and accepting the provisions of said Enabling Act, and that the Federal Statutes, questions and enactments so considered and construed by the Supreme Court of the State of Oklahoma are decisive of the issues in this case, and without considering which the Supreme Court of Oklahoma could not have arrived at its judgment herein.

"(2) The Supreme Court of Oklahoma misinterpreted Chapters 20 and 49 of Mansfield's Digest of the Laws of the State of Arkansas, extended in force by Federal Statute enacted May 2, 1890 (26 Stat. 81), in Indian Territory prior to the admission of Oklahoma as a State, in holding that under the provisions of said chapters the respondent, William M. Patterson, a non-citizen white man, took

an estate by curtesy in the allotted lands of his deceased wife, a one-eighth blood Mississippi Choctaw Indian, selected and filed by him under Federal Indian allotment laws as her administrator after her death, and prior to the admission of Oklahoma as a state.

"(3) The Supreme Court of Oklahoma misconstrued the provisions of the Federal Statute enacted May 2, 1890 (26 Stat. 81), extending in force in Indian Territory certain of the laws of the State of Arkansas, and particularly Chapters 20 and 49 of Mansfield's Digest of said laws, and the provisions of the Federal Statute known as the Choctaw-Chickasaw Supplemental Agreement, adopted July 1, 1902 (32 Stat. 641), and particularly Section 22 of said Act in holding that under the provisions of said acts the respondent, William M. Patterson, a non-citizen white man, took an estate by curtesy in the lands of his deceased wife, a one-eighth blood Mississippi Choctaw Indian, whose allotment was selected and filed by him after the death of his wife as her administrator, and prior to the admission of Oklahoma as a state.

"(4) The Supreme Court of Oklahoma misinterpreted the provisions of the Federal Statute adopted May 2, 1890 (26 Stat. 81), and the provisions of Chapter 97 of Mansfield's Digest of the Laws of Arkansas extended in force in Indian Territory by said statute, as construed by the Supreme Court of Arkansas prior to such extension in *Ferguson* v. *Peden*, 33 Ark. 150; *Jacks* v. *Chahn et al*., 34 Ark. Rep. 534, and *Loomis et al.* v. *Jelks*, 34 Ark. 547, and the provisions of the Federal Statute known as the Enabling Act under which Oklahoma was admitted as a state (34 Stat. 267), in holding that the Arkansas Statute of Limitations extended in force in Indian Territory as aforesaid did not operate to

bar the respondent, William M. Patterson's, right of action as against this petitioner, if he ever had such right.

"(5) That the Supreme Court of Oklahoma misconstrued the provisions of the Federal statute of May 2, 1890 (26 Stat. 81), and the provisions of Chapter 73 of Mansfield's Digest of the laws of Arkansas, as extended in force in Indian Territory by the Federal enactment aforesaid, and particularly Sections 3509, 3510 and 3511 of said digest as construed by the Supreme Court of Arkansas prior to such extension in *Reed et al. v. Hart*, 45 Ark. Rep. 41, and the provisions of the Federal statute, known as the Enabling Act (34 Stat. 267), under which Oklahoma was admitted as a state, and particularly Sections 19 and 20 of said Enabling Act, and the provisions of the Constitution of Oklahoma, adopted pursuant to said Enabling Act, and particularly the provisions of Sections 1, 2 and 23 of the Schedule to said Constitution, in holding that the County Court of Carter County, Oklahoma, did not succeed to the jurisdiction of the United States Court for the Southern District of Indian Territory to confirm the sale by guardian, made under the orders of said United States Court to this petitioner of the lands of the respondents herein, aside from William M. Patterson, prior to the admission of Oklahoma as a state, but not confirmed until after statehood; and in holding that the order of confirmation of said sale entered by the County Court of Carter County, Oklahoma, after statehood, was without jurisdiction and a nullity.

"(6) That the Supreme Court of Oklahoma misconstrued the provisions of the Federal statute of May 2, 1890 (26 Stat. 81), and the provisions of Chapter 73 of Mansfield's Digest of the laws of Arkansas, and particularly Sections 3509, 3510 and 3511

of said digest, as extended in force in Indian Territory by the Federal enactment aforesaid, and as construed by the Supreme Court of Arkansas prior to such extension in the case of *Reid et al. v. Hart*, 45 Ark. Rep. 41, and the provisions of the Federal statute, known as the Enabling Act (34 Stat. 267), under which Oklahoma was admitted as a state, and particularly Sections 19 and 20 of said Enabling Act, and the provisions of the Constitution of Oklahoma, adopted pursuant to said Enabling Act, and particularly the provisions of Sections 1, 2 and 23 of the Schedule to said Constitution, in holding that the County Court of Bryan County, Oklahoma, alone succeeded to the jurisdiction of the United States Court for the Southern District of Indian Territory to confirm the sale by guardian to this petitioner of the lands involved herein, made by William M. Patterson as guardian of all the other respondents herein, under the orders of the United States Court for the Southern District of Indian Territory, and in further holding that the jurisdiction of the said County Court of Bryan County, Oklahoma, was exclusive of the jurisdiction of the county court of every other county, and particularly to the County Court of Carter County, to confirm such sale.

"(7) That the Supreme Court of Oklahoma misinterpreted the provisions of the Enabling Act, providing for the admission of Oklahoma as a state (34 Stat. 267), and particularly the provisions of Sections 19 and 20 of said act, providing for the transfer of causes pending in the United States Courts of the Indian Territory, at the time of the admission of the State of Oklahoma, and the provisions of the Constitution of the State of Oklahoma, adopted pursuant to said Enabling Act, and particularly the provisions of Sections 1, 2 and 23 of the Schedule to the Constitution, in holding that by the provisions of said acts the guardianship proceeding for the sale

of the lands of the respondents herein, other than William M. Patterson, which was pending in the United States Court for the Southern District of Indian Territory at the time of the admission of Oklahoma as a state, was transferred to the County Court of Bryan County, Oklahoma, and in not holding that said proceeding was transferred by the provisions of said acts to the County Court of Carter County, Oklahoma.

"(8) That the Supreme Court of Oklahoma misinterpreted the provisions of the Federal enactment, known as the Enabling Act (34 Stat. 267), under which Oklahoma was admitted as a state, and particularly Sections 19 and 20 thereof, and the provisions of the Constitution of the State of Oklahoma, adopted pursuant to, and in accepting the provisions of said Enabling Act, and particularly Sections 1, 2 and 23 of the Schedule to said Constitution, and the provisions of the Federal statute adopted May 2, 1890 (26 Stat. 81), and the provisions of Chapter 73 of Mansfield's Digest of the laws of Arkansas, extended in force in Indian Territory by the Federal enactment last mentioned, in holding that an order confirming the sale by guardian of the lands of the respondents herein, other than William M. Patterson, to this petitioner made under the orders of the United States Court for the Southern District of Indian Territory, must have been confirmed within one year from the date of such sale, and in further holding that the sale would take the date of the order of confirmation, instead of the order of confirmation relating back and taking the date of the sale.

"(9) The Supreme Court of Oklahoma misinterpreted the provisions of the Federal act of May 2, 1890 (26 Stat. 81), extending in force in Indian Territory Chapter 73 of Mansfield's Digest of the laws of Arkansas, and particularly misinterpreted

the provisions of Sections 3509, 3510 and 3511 of said digest, as construed by the Supreme Court of Arkansas prior to the extension of said chapter to Indian Territory, in the case of *Reid et al. v. Hart*, 45 Ark. Rep. 41, in not holding that the United States Court for the Southern District of Indian Territory, being the district in which the lands sought to be sold and involved herein, were situated, had exclusive jurisdiction to order and confirm the sale by guardian to this petitioner of the lands of the respondents, other than William M. Patterson, and in not holding that with the coming of statehood the jurisdiction to confirm said sale was by the provisions of the Federal statute, known as the Enabling Act (34 Stat. 267), and particularly Sections 19 and 20 of said act, and the provisions of the Constitution of Oklahoma, adopted pursuant to said act, and particularly Sections 1, 2 and 23 of the Schedule to said Constitution, transferred to the County Court of Carter County, Oklahoma, as its successor in jurisdiction, to complete by confirmation the sale previously had in the said Federal Court of the Southern District.

"(10) When, by act of May 2, 1890 (26 Stat. 81), Congress extended in force in Indian Territory the provisions of Chapters 73 and 97 of Mansfield's Digest, they carried with them the prior constructions of said statutes by the Supreme Court of the State of Arkansas, and such constructions had the force of Federal law, and the constructions necessarily placed upon said chapters by the Supreme Court of Oklahoma in this case are in conflict with said prior constructions thereof by the Supreme Court of Arkansas in the case of *Reid et al. v. Hart*, 45 Ark. Rep. 41, and in the cases of *Ferguson v. Peden*, 33 Ark. Rep. 150; *Jacks v. Chafin et al.*, 34 Ark. Rep. 534, and *Logan et al. v. Jelks*, 34 Ark. Rep. 547.

"(11) The Supreme Court of Oklahoma misconstrued the provisions of the Federal statute of May 2, 1890 (26 Stat. 81), and of Chapters 20 and 49 of Mansfield's Digest of the laws of Arkansas, extended in force in Indian Territory by the Federal act aforesaid, in holding that William M. Patterson took a life estate by curtesy in the lands of Emma Patterson, and further misconstrued the provisions of Chapter 97 of Mansfield's Digest of the laws of Arkansas, extended in force in Indian Territory by the Federal act aforesaid, in holding that the Arkansas Statute of Limitations, plead by this petitioner as a defense in this action, did not operate to terminate such life estate, if he did take one, and by reason of such misinterpretation of said statutes it reached the conclusion that there was outstanding in the said William M. Patterson an intervening life estate, which prevented the running of the Oklahoma Statute of Limitations as against the respondents, Doroth A. Patterson and Shelby A. Patterson, who attained full age more than two years prior to the filing of this suit in the trial court, and against whom the Oklahoma Statute of Limitations was plead as a defense."

ARGUMENT AND AUTHORITIES ON THE JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES.

Proposition.

The Supreme Court of the United States has jurisdiction to review by Certiorari the decision of the Supreme Court of Oklahoma in this cause.

Subdivision "B" of Section 237 of the Judicial Code as Amended by Act of February 13, 1925 (— Stat. —), reads as follows:

> "It shall be competent for the Supreme Court, by certiorari, to require that there be certified to it for review and determination, with the same power and authority and with like effect as if brought up by writ of error, any cause wherein a final judgment or decree has been rendered or passed by the highest court of a state in which a decision could be had, where is drawn in question the validity of a treaty or statute of the United States; or where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the constitution, treaties or laws of the United States; or where any title, right, privilege or immunity is specially set up or claimed by either party under the constitution, or any treaty or statute of, or commission held or authority exercised under, the United States; and the power to review under this paragraph may be exercised as well where the Federal claim is sustained as where it is denied. Nothing in this paragraph shall be construed to limit or detract from the right to a review on a writ of error in a case where such a right is conferred by the preceding paragraph; nor shall the fact that a review on a writ of

error might be obtained under the proceeding paragraph be an obstacle to granting a review on certiorari under this paragraph."

The Supreme Court of the United States, in a number of decisions, has laid down the rule that where the opinion of the Supreme Court of the state shows upon its face that a Federal question was considered and passed upon adversely to the plaintiff in error, this is sufficient to confer jurisdiction upon the United States Supreme Court, and this is true irrespective of whether or not the Federal question is raised by the pleading.

See:

Mallinckrodt Chemical Works v. Missouri, 238 U. S. 40-41, 59 Law Ed. 1192, 35 S. C. Rep. 671.

North Carolina Railroad Co. v. Zachary, 232 U. S. 248, 58 Law Ed. 592, 34 S. C. Rep. 305.

Alvin L. Leigh v. Henry S. Green, 193 U. S. 79, 48 Law Ed. 623.

Myer v. City of Richmond, 172 U. S. 82, 43 Law Ed. 374, 19 S. C. Rep. 106.

Arrowsmith v. Harmoning, 118 U. S. 194, 30 Law Ed. 243, 6 S. C. Rep. 1023.

From the syllabus of the case of *State of Montana ex rel. Charles S. Haire v. James H. Rice, as State Treasurer*, 204 U. S. 291, 51 Law Ed. 490, we take the following language:

"A right claimed under an authority exercised under the United States will be regarded as 'special.

ly set up or claimed,' within the meaning of U. S. Rev. Stat. 709, defining the appellate jurisdiction of the Supreme Court of the United States over state courts, where it clearly and unmistakably appears from the opinion of the state court that the Federal question was assumed to be in issue; that the decision was against the Federal claim, and that the decision of the question was essential to the judgment rendered."

To the same effect is the case of *San Jose Land & Water Co.* v. *San Jose Ranch Co.*, 189 U. S. 177, 47 Law Ed. 765. From the body of this opinion we take the following extract:

"While the right under the act of 1887, thus considered, was not originally specially set up and claimed by the plaintiff, inasmuch as it was not an original right, but a right available in rebuttal of the defense, it is one which appears to have been insisted upon in the argument; and under the rule of this court requiring the opinions to be sent up with the record, it has been frequently held to be a sufficient compliance with the words 'specially set up and claimed' that it was fully considered in the opinion of the court and ruled against the plaintiff in error. *Murdock* v. *Memphis*, 20 Wall. 590, 633, 22 L. Ed. 429, 443; *Gross* v. *United States Mortg. Co.*, 108 U. S. 477, 27 L. Ed. 795, 2 Sup. Ct. Rep. 940; *Fire Association of Philadelphia* v. *New York*, 119 U. S. 110, 115, 30 L. Ed. 342, 345, 7 Sup. Ct. Rep. 108; *Egan* v. *Hart*, 165 U. S. 188, 41 L. Ed. 680, 17 Sup. Ct. Rep. 300; *Sayward* v. *Denny*, 158 U. S. 180, 184, 39 L. Ed. 941, 942, 15 Sup. Ct. Rep. 777; *Mallett* v. *North Carolina*, 181 U. S. 589, 45 L. Ed. 1015, 21 Sup. St. Rep. 730."

In the case of *Thomas Murdock et al. v. The Mayor and Aldermen of Memphis et al.*, 20 Wall. 590, 22 L. ed. 429, the Supreme Court of the United States laid down the rule that it would examine the duly certified opinion of the Supreme Court of the state in order to determine what Federal questions had been considered or passed upon by the state court in arriving at its judgment.

In Volume 63, Lawyers' Reports Annotated, at page 331, reference is made to the opinion in the case of *Murdock et al. v. Mayor and Aldermen of Memphis et al.*, aforesaid, and the annotator calls attention to the language of the court in said case, to the effect that there is now no reason why it should not look to the properly authenticated opinion of the state court whose decision is brought up for review so far as might be useful in determining whether any Federal question was passed upon in the state court, and in support of this rule we find there cited the following cases:

"*McManus v. O'Sullivan*, 91 U. S. 578, 23 L. ed. 320; *Gross v. United States Mortg. Co.*, 108 U. S. 477, 27 L. ed. 795, 2 Sup. Ct. Rep. 940; *Adams County v. Burlington & M. Ry. Co.*, 112 U. S. 123, 28 L. ed. 678, 5 Sup. Ct. Rep. 77; *Detroit City R. Co. v. Guthard*, 114 U. S. 133, 29 L. ed. 118, 5 Sup. Ct. Rep. 811; *Jacks v. Helena*, 115 U. S. 288, 29 L. ed. 392, 6 Sup. Ct. Rep. 39; *Fire Asso. v. New York*, 119 U. S. 110, 30 L. ed. 342, 7 Sup. Ct. Rep. 108; *Martin v. Thompson*, 120 U. S. 376, 30 L. ed. 679, 7 Sup. Ct. Rep. 586; *Kreiger v. Shelby R. Co.*, 125 U. S. 39, 31

L. ed. 675, 8 Sup. Ct. Rep. 752; *Dale Tile Mfg. Co.* v. *Hyatt*, 125 U. S. 46, 31 L. ed. 683, 8 Sup. Ct. Rep. 756; *Walter A. Wood Mowing & Reaping Mach. Co.* v. *Skinner*, 139 U. S. 293, 35 L. ed. 193, 11 Sup. Ct. Rep. 528; *Dibble* v. *Bellingham Bay Land Co.*, 163 U. S. 63, 41 L. ed. 72, 16 Sup. Ct. Rep. 939. And this change in the rule is recognized in *United States* v. *Taylor*, 147 U. S. 695, 37 L. ed. 335, 13 Sup. Ct. Rep. 479; *Sayward* v. *Denny*, 158 U. S. 180, 39 L. ed. 941, 15 Sup. Ct. Rep. 777; *Thompson* v. *Maxwell Land Grant & R. Co.*, 168 U. S. 457, 42 L. ed. 542, 18 Sup. Ct. Rep. 121; *Lamb* v. *Columbia Twp.*, 179 U. S. 472, 45 L. ed. 280, 21 Sup. Ct. Rep. 174."

See also *Grayson* v. *Harris*, — U. S. —, 69 L. ed. —, 45 Sup. Ct. Rep. 317, holding procedure by certiorari proper.

In the light of the authorities cited *supra*, we again direct the Court's attention to the opinion of the Supreme Court of Oklahoma in the case now under consideration, and to the fact that of necessity the determination of every issue decided by the court in that case rests upon the construction of Federal statutes, or the laws of the State of Arkansas, extended in force by Federal statutes, and having the force of Federal statutes in Indian Territory prior to statehood, and of rights claimed by this petitioner by virtue of said acts and statutes, or by virtue of the provisions of the Enabling Act, under which Oklahoma was admitted as a state, and the provisions of the Constitution of the State of Oklahoma, adopted pursuant thereto.

As we have previously said, the court, in the decision of this case, held that William M. Patterson took a life estate in the lands of his deceased wife, Emma Patterson, a one-eighth blood Choctaw Indian, whose allotment was selected and filed by the said William M. Patterson as administrator of the estate of his deceased wife; she died in Indian Territory in 1896, prior to statehood, and in determining whether or not William M. Patterson took a life estate, the Supreme Court of necessity construed the provisions of Chapters 50 and 49 of Mansfield's Digest of the laws of Arkansas, and the provisions of the act of May 2, 1890 (26 Stat. 81), extending said chapters of Mansfield's Digest in force in Oklahoma, and the provisions of the Choctaw Chickasaw Supplemental Agreement (32 Stat. 641), and other Congressional enactments, and said opinion specifically mentions and construes Section 22 of said Choctaw Chickasaw Supplemental Agreement and Chapter 49 of Mansfield's Digest of the laws of Arkansas.

In determining and holding that William M. Patterson's right of action was not barred by the statute of limitations, it necessarily construed the Congressional Act of May 2, 1890 (26 Stat. 81), and Chapter 97 of Mansfield's Digest of the laws of Arkansas, extended in force in Indian Territory by said act, and by specific

mention it holds that said Arkansas Statute of Limitations did not run as against the right of action of said respondent.

On the face of said opinion it holds that the Oklahoma Statute of Limitations did not run as against Doroth A. Patterson and Shelby A. Patterson, minors, who became of age more than two years prior to the filing of this action, because William M. Patterson held an intervening life estate. This holding also necessitated the construction of all of the Federal statutes and laws of Arkansas mentioned *supra*.

The opinion on its face specifically holds that the guardianship sale of the lands involved herein to your petitioner was void, and this holding necessitated the construction of the Federal statute of May 2, 1890 (26 Stat. 81), and Chapter 73 of Mansfield's Digest of the laws of Arkansas pertaining to the sale of lands by guardians, extended in force in Indian Territory, to determine whether or not the United States Court for the Southern District of Indian Territory had jurisdiction to order the sale of said lands, and the construction of the Congressional enactment, known as the Enabling Act, under which Oklahoma was admitted into the Union as a state (34 Stat. 267), and the construction of the provisions of the Oklahoma Constitution, accepting said Enabling Act,

and adopted pursuant thereto, in order to determine what Oklahoma court inherited the jurisdiction of the Federal Court to confirm said sale, and in determining these matters the Supreme Court, by specific mention, construes Section 19 of the Enabling Act, and Section 23 of the Schedule to the Constitution, and holds that by virtue thereof the jurisdiction confirming said sale was transferred from the Federal courts to the County Court of Bryan County, instead of the County Court of Carter County.

The Supreme Court of Oklahoma also necessarily construes the provisions of the Federal Act of May 2, 1890 (26 Stat. 81), cited *supra*, and of Chapter 73 of Mansfield's Digest, extended in force in Indian Territory thereby, when it holds as it does in this opinion that a sale made under these acts must have been confirmed in one year from the date of sale.

We do not deem it necessary to cite further authorities in support of our contention that the Supreme Court of the United States has jurisdiction to review this decision of the Supreme Court of Oklahoma, since there can be no question but that the decision is based wholly upon the construction of Federal statutes, without construing which the opinion herein could not have been arrived at. This opinion destroys the rights and title of this peti-

tioner to the lands involved in this action, which rights and title are of necessity based upon and claimed under Federal statutes and authority exercised thereunder.

We respectfully submit, therefore, that this Honorable Court should assume jurisdiction and review the decision of the Supreme Court of Oklahoma by writ of certiorari.

ARGUMENT AND AUTHORITIES ON MERITS OF FEDERAL QUESTION DECIDED.

Proposition No. One.

Under the provisions of the Federal Statutes, and of the Laws of Arkansas having the force of Federal Statutes extended in force thereby in Indian Territory, and in force in said territory at the time of the death of Emma Patterson, and necessarily construed by the Supreme Court of Oklahoma in arriving at its opinion herein, William M. Patterson took no estate by curtesy in the lands of his deceased wife, allotted in her name by her administrator after her death, and the opinion of the Supreme Court of Oklahoma holding that he took such estate therein is erroneous.

Under the foregoing caption we will discuss assignments of errors numbers one, two and three, as set forth in the petition for review filed herewith.

Reference to the agreed statement of facts, set out *supra*, will disclose that Emma Patterson was a Mississippi Choctaw Indian of one-fourth blood; that she died on the 14th day of May, 1906, in the Central District of Indian Territory without having selected her

allotment; that the respondent, William M. Patterson, was her husband, and that at the time of her death she left surviving her her said husband and Doroth A. Patterson, Shelby A. Patterson, Howell M. Patterson, J. Allen Patterson and Ruby E. Patterson, all one-eighth blood Choctaw Indians, and children of her marriage with the said William M. Patterson; that William M. Patterson was a white man of no Indian blood, and that his name did not appear on the tribal rolls, and he was not a citizen of the Choctaw or Chickasaw Tribes of Indians.

After the death of Emma Patterson, William M. Patterson, her husband, acting as her administrator, selected and filed the lands involved in this suit in the name of Emma Patterson, and as her share of the tribal lands of the Choctaw and Chickasaw Tribes of Indians.

Under the foregoing state of facts, your petitioner contends that William M. Patterson took no estate by curtesy in the lands allotted in the name of his deceased wife.

If William M. Patterson took an estate by curtesy in said lands, he took it under and by virtue of the Federal statutes relating to the allotment of Indian lands and extending certain chapters of the laws of Arkansas in force in Indian Territory, and we contend that under these statutes he took no such estate.

In this connection, we respectfully direct the court's attention to the Congressional enactment of May 2, 1890 (26 Stat. 81, Sec. 31), extending in force in Indian Territory, among other chapters of the laws of the State of Arkansas, Chapters 20 and 49 of Mansfield's Digest of the laws of said state. This Federal statute had been enacted long prior to the death of Emma Patterson.

We also direct the court's attention to the Federal enactment of July 1, 1902, known as the Choctaw Chickasaw Supplemental Agreement (32 Stat. 641), and we particularly call the court's attention to Section 22 of said statute, which reads as follows:

> "If any person whose name appears upon the rolls, prepared as herein provided, shall have died subsequent to the ratification of this agreement and before receiving his allotment of land, the lands to which such person would have been entitled if living shall be allotted in his name, and shall, together with his proportionate share of other tribal property, descend to his heirs according to the laws of descent and distribution as provided in Chapter forty nine of Mansfield's Digest of the Statutes of Arkansas: Provided, That the allotment thus to be made shall be selected by a duly appointed administrator or executor. If, however, such administrator or executor be not duly and expeditiously appointed, or fails to act promptly when appointed, or for any other cause such selection be not so made within a reasonable and practicable time, the Commission to the Five Civilized Tribes shall designate the lands thus to be allotted."

It is upon the foregoing statutes that William M. Patterson predicates his claim to a life estate by curtesy in the lands of his wife, Emma Patterson, and it is these statutes which the Supreme Court of Oklahoma construes, and specifically cites in determining that William M. Patterson does have such an estate.

It is our contention that under the foregoing statutes William M. Patterson does not take an estate by curtesy in the lands involved in this suit.

It will be noted that Section 22 of the Choctaw-Chickasaw Supplemental Agreement, quoted *supra*, specifically provides that where a person whose name appears upon the rolls of said tribes shall have died before receiving the allotment to which he would have been entitled if living, that it shall be allotted in his name and shall descend to his HEIRS according to the laws of descent and distribution as provided in CHAPTER 49 OF MANSFIELD'S DIGEST OF THE STATUTES OF ARKANSAS.

We have capitalized above the words which we particularly wish to stress; the descent is to the HEIRS of the allottee, and it is not according to the laws of the State of Oklahoma as a whole, but according to the provisions of CHAPTER 49 OF MANSFIELD'S DIGEST OF THE STATUTES OF ARKANSAS.

As we shall point out further along in this brief, one who claims an estate by curtesy, under the state of facts which we have under consideration in this case, cannot, under the laws of Arkansas, as construed both by the Federal courts and the courts of Oklahoma, consistently do so as an HEIR, and if the descent is to be according to the provisions of Chapter 49 of Mansfield's Digest of the Laws of Arkansas on any other theory than as an heir, it cannot be sustained by said chapter, because there is not one line in the whole chapter in regard to an estate by curtesy.

We desire to stress the fact that it is not this Chapter 49 of the Laws of Arkansas which creates or provides for an estate by curtesy, but that said estate by curtesy is provided for by CHAPTER 20 OF THE LAWS OF ARKANSAS.

Section 22 of the Choctaw Chickasaw Supplemental Agreement, above referred to, says nothing whatever about these lands descending in accordance with the provisions of CHAPTER 20 OF THE LAWS OF ARKANSAS, or the laws of Arkansas generally, but points out one specific chapter, being CHAPTER 49, and says that these lands shall descend according to the provisions of that chapter, and in it we find not one line on the subject of curtesy.

We conclude, therefore, that under the plain wording of the statutes themselves there was never any intent that the lands should descend, under the circumstances in this case, subject to a life estate by curtesy in the husband.

There is a long line of decisions holding that in a case of this kind, if the husband should die the wife would take a dower interest; this holding is correct, and we agree with it. The difference is that Chapter 49 of Mansfield's Digest does deal with and provide for a dower interest, but it does not deal with or provide for a curtesy interest.

This distinction being pointed out, we do not deem it necessary to discuss the line of authorities dealing with the subject of dower.

As we have previously said, it is Chapter 20 of the Laws of Arkansas which deals with the subject of curtesy; the applicable portion of this chapter is Section 366 of Mansfield's Digest, and it reads as follows:

> "The common law of England, so far as the same is applicable and of a general nature, and all statutes of the British Parliament in aid of or to supply the defect of the common law made prior to the fourth year of James the First (a) (that are applicable to our own form of government), of a general natural and not local to that kingdom, and not inconsistent with the constitution and laws of the United States or the constitution and laws of

this state, shall be the rule of decision in this state unless altered or repealed by the general assembly of this state."

It will be noted that this is an adoption of the common law of England on the subject of curtesy, and we must then conclude that that law, when adopted by the State of Arkansas, was adopted with the constructions placed upon it by the highest courts of England prior to such adoption.

(See authorities submitted under Proposition Number Five of this brief.)

This chapter was in turn extended in force in Indian Territory by the Congressional enactment of May 2, 1890 (26 Stat. 81), and prior to such extension in force in said Territory it had been construed by the Supreme Court of Arkansas in a number of cases, which we shall hereafter cite, but at this time we particularly point out the case of *McDaniel v. Grace et al.*, 15 Ark. 466.

Our first contention is that Section 22 of the Choctaw-Chickasaw Supplemental Agreement, cited *supra*, makes no reference whatever to the descent of the lands involved in this action according to the provisions of Section 20; that it makes no provision for the descent of said lands according to the provisions of the Laws

of Arkansas generally, but that it does provide for the descent of said lands according to the provisions of one specific chapter of the Laws of Arkansas—Chapter 49 of Mansfield's Digest—which contains not a single line in regard to the subject of curtesy, and that, therefore, it is plain upon the face of the statute that there was never any intent that, under the state of facts which confronts us in this case, William M. Patterson would take an estate by curtesy.

Our second contention is, that if it be held that the intent was that the descent of these lands should be according to the laws of Arkansas generally, that still William M. Patterson would take no estate by curtesy, because the elements or conditions essential to the English common law right of curtesy are not present in this case.

The almost universal holding of the courts, both state and federal, is that to create an estate by curtesy under the common law of England the following essentials are necessary:

(a) That the wife be seized of an estate of inheritance to which issue of the marriage may possibly succeed as heir to the wife.

(b) That seizin in deed (less properly styled actual seizin) be obtained during coverture.

(c) That issue be born alive.

(d) The death of the wife.

The transpiring of all of these events constitute the contingency upon which an estate by curtesy vests in the husband, and if any one of these four essentials be not present, no such estate is created.

This construction was placed upon the Arkansas statute in the case of *McDaniel v. Grace et al.*, 15 Ark. Rep. 466, cited *supra*, long prior to the adoption and extension of Chapter 20 of the Arkansas Laws in Indian Territory, and as will be seen according to the authorities submitted in this brief in the argument of Proposition Number Five, that construction of the Arkansas court was adopted by Congress when it extended Chapter 20 in force in said Territory; if, then, it be held that the lands allotted in this case by William M. Patterson, a white man, in the name of Emma Patterson, his deceased wife, descended according to the laws of the State of Arkansas generally, we must determine whether or not the four elements hereinbefore pointed out as essential to an estate by curtesy in the husband of the deceased, Emma Patterson, are present; and the facts disclose that the first two are absent. That is to say, Emma Patterson was not seized of an estate of inheritance, and there was no actual seizin of said lands in her during her life time.

It is admitted by the agreed statement of facts filed in this case that Emma Patterson had not even selected

here allotment, to say nothing of having gone into possession of same, before her death; the selection was made and the allotment was filed by her husband, William M. Patterson, after her death, and it is a physical impossibility that she could have been in actual possession of said lands during her life time.

In the case of *Lessee of John Mercer and Mary Scott Mercer* v. *William Cary Selden*, — U. S. —, 11 Law. ed. 38, the last paragraph of the syllabus by the Supreme Court of the United States is as follows:

> "The general rule of law is, that there must be an entry during coverture, to enable the husband to claim a tenancy by the curtesy."

And in the body of the opinion we find the following language:

> "In 1 Coke on Litt. 29, Ch. 4, Sec. 35, it is said: 'Tenant by the courtesy of England is, where a man taketh a wife seized in fee simple, or in fee-tail general, or seized as heir in tail special, and hath issue by the same wife, male or female, born alive, albeit the issue after dieth or liveth, yet if the wife dies, the husband shall hold the land during his life, by the laws of England.' 'And first, of what seizin a man shall be tenant by the courtesy. There is in law a two-fold seizin, viz., a seizin in deed and a seisin in law. And here Littleton intendeth a seisin in deed, if it may be attained unto, as if a man dieth seized of lands in fee simple, or fee-tail general, and these lands descend to his daughter, and she taketh a husband and have issue, and dieth before any entry, the husband shall

not be tenant by the courtesy; and yet in this case she had a seisin in law; but if she or her husband had during her life entered, he should have been tenant by the courtesy.' The wife at common law was endowable where there had been no actual possession, and the reason is, that during coverture she could not take possession of the lands of her husband. *But actual seisin was necessary to enable the husband to claim as tenant by the courtesy.*"

It so happens that the Supreme Court of the United States has had occasion to refer to the case of *McDaniel v. Grace et al.*, 15 Ark. Rep. 466, referred to by us *supra*, and we respectfully direct the court's attention to the case of *J. H. Allen et al. v. Helena Hanks*, 136 U. S. 300, 34 Law. ed. 414, from which decision we quote as follows:

"When the Constitution of 1868 was adopted, the appellee's husband could have no estate by the curtesy in lands not then owned by her; for, as was said by the Supreme Court of Arkansas in *McDaniel v. Grace*, 15 Ark. 465, 483, except when from the nature and circumstances of the real property of the wife she may be regarded as constructively in possession (as where it consists in wild lands, or it is impossible or impracticable to enter upon them), marriage, actual seisin of the wife, issue, and death of the wife, are all requisite to create an estate by the curtesy; *and that the husband was not entitled to his curtesy, according to the common law, unless the wife was seized in fact and in deed.* *Mercer v. Sheldon*, 42 U. S. 1, How. 37, 54 (11:38, 45); *Davis v. Mason*, 26 U. S. 1 Pet. 503, 507 (7:239, 240); Kent Com. 29, 30."

From the body of the opinion in the case of *McDaniel v. Grace et al.*, 15 Ark. Rep. 465, cited *supra*, and referred to in the foregoing opinion by the United States court, we take the following language:

> "We have no statute on the subject of the curtesy of the husband in the wife's land. By the common law, tenancy by the curtesy is an estate for life, created by the act of the law. When a man marries a woman, seized at any time during the coverture of an estate of inheritance in severalty, in coparcenary, or in common, and hath issue by her born alive, and which might, by possibility, inherit the same estate as heir to the wife, and the wife dies in the lifetime of the husband, he holds the land during his life, and it is immaterial whether the issue be living at the time of the seizin, or at the death of the wife, or whether it was born before or after the seizin. 4 Kent Com. 289; 1 Hilliard 110, 111.
>
> "Four things are requisite to an estate by the curtesy, viz: marriage, actual seizin of the wife, issue, and death of the wife. *It. The wife, according to the English law, must have been seized in fact and in deed, and not merely of a seizin in law of an estate of inheritance, to entitle the husband to his curtesy.* 4 Kent. 30."

The foregoing opinion was written by the Supreme Court of Arkansas in 1855.

See also the cases of

Hampton v. Cook, 64 Ark. 353, 62 Am. St. Rep. 194.

Neeley v. Lancaster, 47 Ark. 175, 58 Am. St. Rep. 752.

Owens v. Jahine, 115 S. W. 383.
Harrod v. Myers, 21 Ark. 600.
Quinn v. Ladd, 39 Ore. 261, 59 Pac. 457.
Crowley v. Grant, 127 Pac. 28.
Stoddard v. Gibbs, 23 Fed. Cas. No. 13,468.
Mapin v. Maupin, 110 S. W. 840.
Parsons v. Justice, 174 S. W. 725.
Evans v. Morris, 136 S. W. 408.

See, also, 2 Blackstone 127, where it is said:

"*The seizin of the wife must be an actual seizin, or possession of the lands; not a bare right to possess, which is a seizin in law, but an actual possession, which is a seizin in deed.*"

The foregoing authorities leave no question of doubt but that there must have been an actual seizin in Emma Patterson of the lands involved in this suit during her life time, in addition to the other essentials hereinbefore pointed out by us, before an estate by curtesy would vest in William M. Patterson; there was no such possession; she died before even selecting her allotment, to say nothing of having been in possession of it, and therefore no such estate ever vested in William M. Patterson.

In further support of our contention that Emma Patterson neither owned nor possessed the specific lands allotted to her prior to her death, we call the court's attention to the case of *Hooks et al. v. Kennard*, 28 Okla. 457, 114 Pac. 744, where the Supreme Court of

Oklahoma held that the *inception of the title of an Indian allottee, or his heirs, is the filing upon the land.*

Bear in mind that the land in question in the case now before the court was not filed upon until after Emma Patterson's death, and then by her administrator.

See, also, the cases of:

DeGraffenreid v. Iowa Land & T. Co., 20 Okla. 687, 95 Pac. 624
Barnett v. Way, 29 Okla. 780, 119 Pac. 418
Bledsoe v. Wortman, 35 Okla. 261, 129 Pac. 841.

In the case of *Sanders v. Sanders*, 28 Okla. 59, 117 Pac. 338, the Supreme Court of Oklahoma had before it the question of whether or not a right of curtesy existed where the wife died prior to the selection of the land, and in that case it held that such right did not exist.

Supporting our contention that there could have been no actual seizin of the lands in Emma Patterson during her lifetime, the following line of authorities *hold that there is no individual interest in any individual Indian prior to the actual selection of his allotment:*

Cherokee Nation v. Hitchcock, 187 U. S. 294.
Delaware Indians v. Cherokee Nation, 193 U. S. 127.

Stephens v. Cherokee Nation, 174 U. S. 445.
Gritts v. Fisher, 224 U. S. 640.
Franklin v. Lynch, 233 U. S. 269.
Sizemore v. Brady, 235 U. S. 441.
Woodward v. DeGraffenreid, 238 U. S. 284.
McKee v. Henry, 201 Fed. 74.
Hayes v. Barringer, 168 Fed. 221.
Braun v. Bell, 192 Fed. 427.
Gena Tippett Arnold v. Ardmore Chamber of Commerce Industrial Corporation, 4 Fed. (2nd ser.) 838.

From the case of *Sizemore v. Brady*, 235 U. S. 441, 59 L. ed. 308, we take the following quotation:

> "*The selection or allotment of the land was the initiatory step, and was prerequisite to the vesting of any individual title or interest in the land of the tribe. Hooks v. Kennard*, 28 Okla. 457, 114 Pac. 744; *DeGraffenreid v. Iowa Land & T. Co.*, 20 Okla. 687, 95 Pac. 624; *McKee v. Henry*, 119 C. C. A. 412, 201 Fed. 74; *Braun v. Bell*, 192 Fed. 427; *Hayes v. Barringer*, 93 C. C. A. 507, 168 Fed. 221."

We have previously stated that the right of William M. Patterson to an estate by curtesy in these lands could not possibly be predicated on the theory of *inheritance*, and have called the court's attention to the term HEIR as used in Section 22 of the Choctaw Chickasaw Supplemental Agreement, cited *supra*.

The court will bear in mind that the agreed statement of facts, set out *supra*, discloses that William M. Patterson was and is a *non-citizen white man possessing no Indian blood whatever*, and not on the tribal rolls.

The law seems to us to be thoroughly settled that a white citizen of the United States COULD NOT INHERIT the allotted land of a member of the Choctaw-Chickasaw Tribes of Indians prior to the admission of the State of Oklahoma into the Union.

See the case of *Gillam* v. *Anglin*, 44 Okla. 684, 145 Pac. 1145. It will be noted that in the body of the foregoing opinion Mr. Justice Harrison quotes with approval the case of *Shulthis* v. *McDougal*, 170 Fed. 529, where this question was before the Eighth Circuit Court of Appeals.

Also the cases of *Pigeon et al.* v. *Buck*, 38 Okla. 101, 131 Pac. 1083, and *Roberts* v. *Underwood*, 38 Okla. 376, 132 Pac. 673. The two last mentioned cases were appealed to the Supreme Court of the United States and there affirmed.

We respectfully direct the court's attention to the following cases by the last mentioned court:

Daniel A. McDougal v. *Edmond McKay*, 237 U. S. 372, 59 L. ed. 1001, from the syllabus of which we quote as follows:

> "The allotment of an infant Creek Indian who was enrolled after death under the Supplemental Creek Agreement of June 30, 1902 (32 Stat. at L. 500, Chap. 1323), passes to his father in fee simple where this latter is of Creek blood and the mother

is not, since the allotment cannot, in view of decisions already rendered by the circuit court of appeals for the eighth circuit and by the supreme court of the state of Oklahoma, be regarded as a 'new acquisition' within the meaning of the provision of Mansf. (Ark.) Dig., Chap. 49, Sec. 2531, made applicable by that agreement, that if the estate of a person dying intestate without descendants be a new acquisition, it shall pass to the father for his lifetime, and then descend to the collateral kindred of the intestate, but such allotment must be treated as an ancestral estate within the meaning of the other provisions of that section that if the estate comes by the father, it shall ascend to the father and his heirs, and if from the mother, to her and her heirs.

"(For other cases, see Indians, 8, in Dig. Sup. Ct. 1908.)"

See, also, *Pigeon et al. v. Buck*, 227 U. S. 386, 59 L. ed. 1067.

In the light of the foregoing authorities we assert with confidence that William M. Patterson could not possibly take an estate by inheritance in the lands of his deceased wife, Emma Patterson, and since it is an estate by inheritance that is spoken of in Section 22 of the Choctaw-Chickasaw Supplemental Agreement, and since no estate by curtesy is provided for in Chapter

49 of Mansfield's Digest, therein referred to, we are lead to conclude that under the state of facts confronting us in this case it was not the intent nor purpose that a white husband of non-Indian blood should take an estate by curtesy in the lands allotted in his wife's name after her death.

We submit, therefore, that William M. Patterson took no curtesy estate in the lands of Emma Patterson, but that said lands descended to the other respondents herein, being the children of Emma Patterson, unincumbered of any life estate in their father, William M. Patterson.

Proposition No. Two.

If it be held that under the provisions of the Federal Statutes, and the laws of Arkansas having the force of Federal statutes in force in Indian Territory at the time of the death of Emma Patterson, her husband, William M. Patterson, did take an estate by curtesy in the lands selected and allotted in her name by her administrator after her death, then his right to assert such estate as against U. Sherman Joines, your petitioner, is barred by the Federal Statutes and laws of Arkansas extended in force in Indian Territory thereby necessarily construed by the Supreme Court of Oklahoma in arriving at its opinion herein, and the opinion of said court holding that such right of action is not barred is erroneous.

Under this caption we desire to discuss assignments of error numbers one and four, particularly number four.

By referring to the answer filed by this petitioner

in the trial court, and referred to *supra*, which is set out at length in the Transcript filed herewith, it will be seen that this petitioner specifically plead the Arkansas Statute of Limitations as a defense to the right of the respondent, William M. Patterson, to maintain this action; the trial court held that his right of action was barred by said Arkansas Statute, but in its final opinion filed herein the Supreme Court of Oklahoma held that said right of action was not barred by the Arkansas Statute, for the reason that the deed under which your petitioner claims was void, and that he has no color of title to said premises.

It is our contention that this statute operates to bar any action by the respondent, William M. Patterson, irrespective of whether or not this petitioner's deed was or is valid or void,, and in fact irrespective of whether or not he claimed under any deed at all.

The respondents in their petition assert that U. Sherman Joines went into possession of said lands in July, 1907, and that he has been in open adverse possession ever since, and it is so stipulated in the agreed statement of facts upon which this case was tried.

It is further stipulated that the original deed executed by William M. Patterson, as guardian, in favor of your petitioner, bears date of the 5th day of October,

1907. This stipulation discloses that your petitioner went into actual possession of said lands some months prior to the admission of Oklahoma as a state and while the laws of Arkansas were in force in Indian Territory.

The Congressional enactment of May 2, 1890 (26 Stat. 81), extended in force in Indian Territory Chapter 97 of Mansfield's Digest of the Laws of Arkansas. The pertinent sections of this chapter are Sections 4471 and 4476 of said digest, and the pertinent parts of these sections read as follows, to wit:

> "Section 4471. No person or persons, or their heirs, shall have, sue or maintain any action or suit, either in law or equity, for any lands, tenements or hereditaments but within seven years next after his, her or their right to commence, have or maintain such suit shall have come, fallen or accrued; and all suits, either in law or equity, for the recovery of any lands, tenements or hereditaments shall be had and sued within seven years next after title or cause of action accrued, and no time after said seven years shall have passed. * * * ."
>
> "Section 4476. No action for the recovery of real property, when the plaintiff does not claim title to the lands, shall be brought or maintained when the plaintiff, or his testator or intestate, has been five years out of possession. Rev. Stat., Chap. 53, Sec. 20."

Under the allegations of the respondents' own petition their right of action accrued in July, 1907, when

your petitioner went into open adverse possession of said lands.

The Supreme Court of Oklahoma, in the case of the *United States Fidelity & Guaranty Co.* v. *Fidelity Trust Co. et al.*, 49 Okla. 398, 153 Pac. 195, said:

> "Where one person may rightfully sue another, a cause of action has accrued, and the statute of limitations begins to run."

The case of *Patterson* v. *Bonner*, 73 Okla. 224, 175 Pac. 826, is to the same effect.

An examination of the file marks on respondents' petition, set out in the Transcript filed herewith, discloses that this suit was filed on the 21st day of February, 1920, some thirteen years after respondents' cause of action had accrued.

The Supreme Court of Oklahoma has, in a number of cases, held that where a cause of action arose in Indian Territory under the Arkansas laws in force there in prior to statehood, that it is the Arkansas statute which operates, and not the Oklahoma statute. See the following authorities:

Patterson v. *Rousuey*, 58 Okla. 185, 159 Pac. 636.

Davis v. *Foley*, 60 Okla. 86, 159 Pac. 646.

Sittel v. *Wright*, 3rd Ind. Ter. 684, 64 S. W. 576.

The court, in its opinion in the case now under consideration, bases its decision on the ground that the Arkansas statute would not run because your petitioner has no color of title to said land.

Fortunately, the Arkansas statute of limitations, to which we refer, had been repeatedly construed by the highest court of the State of Arkansas, prior to its adoption and extension in force in Indian Territory, and we again take the liberty of referring this Court to the authorities cited in the argument of our Proposition Number Five herein, to sustain our contention that when this Arkansas Statute of Limitations was extended in force in Indian Territory, the constructions previously placed upon it by the highest court of the State of Arkansas were likewise extended in force in said territory. We now wish to call the Court's attention to the constructions placed upon these statutes by the Arkansas court.

In the case of *Ferguson v. Peden*, 33 Ark. Rep. 150, this question arose, and from the syllabus of the case we quote as follows:

> "A deed or color of title is not necessary to maintain the statute bar to the extent of the actual adverse occupancy."

From the body of the opinion in this case, on page 155, we take the following language:

> "Justice Cowen, in delivering the opinion of the

court in *Hanbest v. Trinity Church*, said: "So long as a man is in possession of land, claiming title, however wrongfully, and with whatever degree of knowledge that he has no right, so long the real owner is out of possession, in a constructive as well as an actual sense, it is of the nature of the statute of limitation, when applied to civil actions, in effect, to mature a wrong into a right, by cutting off the remedy. To warrant its application in ejectment, the books require *color of title*, by deed or other documental semblance of right in the defendant, *only when the defense is founded on a constructive adverse possession. But neither a deed nor any equivalent monument is necessary, where the possession is indicated by actual occupation, and any other evidence of an adverse claim exists. The monument is but one circumstance by which to make out an adverse possession.*"

The Supreme Court of Arkansas again had this question before it in the case of *Jacks v. Chafin et al.*, 34 Ark. Rep. 531. Paragraph four of the syllabus of this case reads as follows:

"Possession of land during the full period of limitation, under such circumstances as would make a valid defense, amounts to an *investiture of title which may be actually asserted in all respects, as effectively as if acquired by deed.* The continuity of possession has reference to the time the statute is running, and is not necessary after the bar has attached."

From the body of the same opinion, on page 541, we take the following extract:

"The weight of authority in the United States seems now in favor of the doctrine that possession

of land during the full period of limitation, under such circumstances as would make a valid defense, amounts to an investiture of title; which may be actively asserted, in all respects as effectively as if acquired by deed. (See cases referred to in Wash. on R. Property, Book 3, Chap. 2, Sec. 7, Sub. Sec. 48). This court has repeatedly approved this view of the effect of the statute. It was applied to a case of personal property in *Hicks* v. *Flint*, 21 Ark., p. 463, and is announced, or underlies, the reasoning in *Sharp* v. *Johnson*, 22 Ark. 79; *Walker* v. *Towns*, 23 Ark 147; *Kirby* v. *Lantrae et al.*, 26 Ark. 568; *Mayo & Jones* v. *Cartwright*, 30 Ark. 407; *Mooney et al.* v. *Coolidge*, ib. 460; *Ferguson* v. *Peden* (M. S.). The continuity of possession, always insisted upon, has reference to the time during which the statute is running, and is not necessary after the bar has attached."

To the same effect is the case of *Logan et al.* v. *Jelks*, 34 Ark. Rep. 547. The syllabus of this case sets forth the law as follows:

"A void patent may be used to give color of title and fix the limits of possession, and a continuous adverse possession under it, or without any color at all, when the limits of possession may be shown, for a period of over seven years, as against parties whose rights are not saved, will create a title which may be used to maintain ejectment."

The Arkansas court, in the body of the opinion, at page 549, uses the following language:

"Conceding the patent from the United States to have been void, it may be, nevertheless, used to give color of title and fix the limits of possession, and a

continuous adverse possession under it, or without any color at all, when the limits of possession may be shown for a period of over seven years as against parties whose rights are not saved, will creat a title which may be used to maintain an action of ejectment. This question has been directly decided in the case of *Jacks* v. *Chaffin*, at the present term, and the principles of that case govern this."

It will be noted that the decision in the cases of *Jacks* v. *Chaffin et al.*, and *Logan et al.* v. *Jelks*, cited *supra*, were decided by the Supreme Court of Arkansas in the November 1879 Term, and that the case of *Ferguson* v. *Peden*, *supra*, was decided shortly before that date; all of them construe the Arkansas seven year statute of limitations, and all of these constructions had been placed upon that statute before its extension in force in Indian Territory by the Congressional enactment of May 2, 1890 (26 Stat. 81). Therefore, we have a uniform and settled construction, which is adopted along with the adoption of the statute of limitations of Arkansas construed thereby, which construction, as well as the statute, had the force of Federal law in Indian Territory.

The construction adopted by Congress is in direct conflict with the construction which the Supreme Court of Oklahoma now seeks to place upon the same statute. In determining the issues under consideration, the Arkansas cases hold that no color of title whatever is necessary in order to start the statute of limitations running;

that mere adverse possession for the period of seven years creates the bar, and not only this, but in addition thereto, continuous adverse possession under said statute with or without color of title will of itself create title, which may be used affirmatively as the basis of an action of ejectment.

The Supreme Court of Oklahoma, on the other hand, in its opinion sought to be reviewed in this action, holds that the statute of limitations of Arkansas does not operate to bar this action, for the reason that your petitioner's deed was void and he has no color of title.

Here is an absolute conflict between the holding of the Supreme Court of Oklahoma and the Arkansas statute, with the constructions placed thereon by the Arkansas court, and adopted by the Act of Congress of May 2, 1890 (26 Stat. 81), and the opinion of the Supreme Court of Oklahoma is necessarily erroneous.

Not only is this true, but we respectfully submit that the holding of the Supreme Court of Oklahoma in this case is not in line, nor consistent with, the former holdings of the same court in numerous other cases, which it does not undertake to overrule by this decision. It is true that the other holdings, to which we refer, largely construe the Oklahoma statute, but there is nothing in the language of the two statutes which would bring

about a different construction of the Oklahoma statute from that of the Arkansas statute, insofar as the requirement that there must be color of title before the statute starts to run, is concerned, and in the cases which we shall now cite the Supreme Court of Oklahoma has uniformly held that no color of title whatever is necessary, and that the statute will run even as against a void deed.

One of the earlier cases by the Supreme Court of Oklahoma on this point is that of *Dodson v. Middleton et al.*, 38 Okla. 763, 135 Pac. 368. The syllabus of this case reads as follows:

> "Where the grantee went into possession of real estate immediately after the purchase thereof by him at a void guardian's sale, and such grantee and those claiming under him remain continuously in possession thereof thereafter, and where the action to recover said real estate is not brought by the minor or his guardian within five years after the recording of the deed, nor by the minor within two years after his legal disability is removed, an action by such minor for the recovery of said property is barred by Sections 5547 5549, Comp. Laws 1909."

From the body of this opinion we take the following language, which very clearly and forcefully sets forth the reasoning upon which the doctrine, as set forth in the syllabus of the case, is based. The court there says:

> "The reasoning upon which this doctrine is sustained is stated in *Harlin v. Peck, supra*, in the fol-

lowing language: "There is nothing in the policy or language of the statute which excludes void sales from its operation. The policy of the statute is to quiet titles to real estate sold by order of the probate courts; and, in view of that policy merely, there can be no distinction between sales which may be termed void for the want of jurisdiction and those which are voidable only. Nor is there anything in the language of the statute which creates such a distinction. * * * (If the statute applies only to valid sales), the defendant in every case would be compelled to allege and prove a valid sale before he could invoke the protection of the statute; or, in other words, he must show that he stands in no need of protection in order to obtain protection. * * * We think the statute applies to all sales, void as well as voidable.'"

A late case by the Supreme Court of Oklahoma, to the same effect, and which sums up and adopts a long line of previous decisions, is that of *Sandlin et al. v. Barker et al.*, 95 Okla. 113, 218 Pac. 519, and we particularly direct the Court's attention to subdivision five of the opinion of the Supreme Court of Oklahoma in that case. We quote from this decision as follows:

"As to the contention that the statute of limitation does not run against an administrator's deed, executed in pursuance of a void sale, this court has consistently held that the statute does run in such cases since the decision of this court in *Dodson v. Middleton*, 38 Okla. 763, 135 Pac. 368, by Hayes, C. J., rendered September 22, 1913. This case recognized the conflict among the authorities on the question, and committed this court to the view that Sub-

division 2 of Section 5548, Comp. Laws 1909, which provides:

"'An action for the recovery of real property sold by executors, administrators or guardians, upon an order or judgment of a court directing such sale, brought by the heirs or devisees of the deceased person, or the ward or his guardian, or any person claiming under any or either of them, by the title acquired after the date of the judgment or order, within five years after the date of the recording of the deed made in pursuance of the sale.'

applied, even though the proceedings leading up to the sale, or the sale itself, was void, and the case of *Harlan* v. *Peck*, 33 Cal. 515, 91 Am. Dec. 653, was cited with approval, the following quotation being incorporated in the opinion:

"'There is nothing in the policy or language of the statute which excludes void sales from its operation. The policy of the statute is to quiet titles to real estate sold by order of the probate courts; and in view of that policy merely, there can be no distinction between sales which may be termed void for the want of jurisdiction, and those which are voidable only. Nor is there anything in the language of the statute which creates such a distinction * * * (if the statute applies only to valid sales) the defendant in every case would be compelled to allege and prove a valid sale before he could invoke the protection of the statute; or, in other words, he must show that he stands in no need of protection in order to obtain protection. * * * We think the statute applies to all sales, void as well as voidable.'"

We take the following reference to Oklahoma decisions from the body of this opinion:

"In *Group v. Jones*, 44 Okla. 344, 144 Pac. 377, Section 4655, R. L. 1910, was held to bar an action to recover real estate sold under a void foreclosure sale, and *Dodson v. Middleton, supra*, was followed.

"In *Wray v. Howard*, 79 Okla. 223, 192 Pac. 584, and *Fulp v. Squires*, 77 Okla. 224, 187 Pac. 921, Subdivision 2 of Section 4655, R. L. 1910, was held to be the applicable statute where a minor's property had been sold at a void guardian's sale, but it was held further that by virtue of Section 4656, R. L. 1910, the minor might begin the action to set aside the sale at any time prior to two years after his legal disability was removed.

"In *Glory v. Bagby*, 79 Okla. 155, 188 Pac. 881, the action was brought to set aside a void guardian's deed executed by the guardian of a minor Cherokee Indian, and the court said:

"'Under the facts in this case we see no reason for not allowing the rule heretofore announced by this court in the case of *Dodson v. Middleton*.'"

Various other cases from other states are cited by the Supreme of Oklahoma in this opinion and quoted with approval, but we do not deem it necessary to cite further cases here, as we think that the decision of the Supreme Court of Arkansas placed upon this Arkansas statute before its adoption is controlling and conclusive.

We submit, therefore, that on this point the Supreme Court of Oklahoma erred in reversing the decision of the trial court, and in holding that the Arkansas statute did not operate to bar this right of action.

Proposition Number Three.

Under the provisions of the Federal Statutes and the laws of Arkansas as extended in force in Indian Territory, as construed by the highest courts of Arkansas before the extension of said laws to Indian Territory, the United States Court for the Southern District of Indian Territory had jurisdiction to order and confirm the sale by guardian of the lands involved in this action, and under the provisions of the Federal Enabling Act by which Oklahoma was admitted as a State, and the provisions of the Oklahoma Constitution adopted pursuant to said Enabling Act, the jurisdiction to confirm the sale previously ordered and made under the orders of the United States Court for said Southern District was, with the coming of Statehood, conferred upon and inherited by the County Court of Carter County, Oklahoma, and the Supreme Court of Oklahoma erred in holding that the sale made under the orders of the said United States Court and confirmed by the order of the County Court of Carter County was void.

For the sake of brevity, and to prevent unnecessary repetition, we will discuss under this caption assignments of error numbers 5, 6, 7, 8, 9, 10 and 11, as set forth in the petition for review filed herewith, reserving the privilege of further discussing Sections 10 and 11 under our proposition number five.

The agreed statement of facts, on which this case was tried by the District Court of Murray County, Oklahoma, and which has been copied in full in the Transcript filed herewith and referred to *supra* in this brief, discloses the following facts pertinent to this discussion:

The lands involved in this suit were the tribal allotment of Emma Patterson, a one-fourth blood Mississippi Choctaw Indian; she died May 14, 1906, in the Central District of Indian Territory, leaving surviving her her husband, William M. Patterson, a non-citizen white man, not on the tribal rolls, he being one of the respondents herein, and five children, Doroth A. Patterson, female; Shelby A. Patterson, male; Howell M. Patterson, male; J. Allen Patterson, male, and Ruby E. Patterson, female, all children born of the marriage of the said Emma Patterson with the said William M. Patterson, said children being one-eighth blood Mississippi Choctaw Indians.

William M. Patterson had himself appointed guardian for all of the children hereinbefore named, prior to the admission of Oklahoma as a state; such appointment being made by the United States Court for the Central District of Indian Territory, being the district of the residence of the family at the time of such appointment; the lands involved herein were filed by William M. Patterson as administrator of the estate of Emma Patterson after her death, but prior to the admission of Oklahoma as a state.

The Lands Involved in This Action Were Situated in the Southern Judicial District of Indian Territory.

It is further admitted by said stipulation that on the 24th day of April, 1907, William M. Patterson was

the duly appointed, qualified and acting guardian of all of the other respondents herein, and that on said date he went into the United States Court for the Southern District of Indian Territory, being the district in which the lands were located, and filed his petition to sell said lands; a copy of said petition is attached as Exhibit "A" to the agreed statement of facts. He obtained his order of sale from said court, and this order is attached as Exhibit "B" to the agreed statement of facts.

It is admitted in the stipulation that appraisement was had, notice of sale given and all other proceedings had in accordance with the orders filed in the case.

On the 8th day of October, 1907, William M. Patterson filed in said United States Court his report of sale and petition for order of confirmation, a copy of which is attached to the agreed statement of facts as Exhibit "C", and this report shows a full compliance with all conditions precedent to the sale, and there has never been any contention made by the respondents that these conditions were not complied with, except to assert that the court had no jurisdiction.

This report of sale recites that the lands were sold to this respondent; that the consideration received was equivalent to the full value of said lands; that the money therefor has been paid over by your petitioner to the

said guardian, William M. Patterson, and that a deed has been executed by the said William M. Patterson as guardian in favor of your petitioner, and asks for the confirmation of these proceedings.

This deed was dated on the 5th day of October, 1907, and is attached to the agreed statement of facts as Exhibit "F".

It is further stipulated that your petitioner, U. Sherman Joines, went into possession of said lands, and that he has been in undisputed possession and claiming the ownership thereof ever since the 5th day of October, 1907, and that he now is in possession thereof.

Oklahoma was admitted as a state in the latter part of November, 1907, and it will be noted that all of the proceedings for the sale of this property down to the order of confirmation thereof were had and done in the United States District Court for the Southern District of Indian Territory prior to statehood; statehood then intervened and this proceeding for the sale of these lands was, by the procedure provided by the Constitution and Enabling Act, passed on down to the County Court of Carter County, where it was overlooked and the order of confirmation was not entered until the 5th day of August, 1913, at which time the court acted on the petition previously filed in the United States Court for the

Southern District, and entered its order confirming said sale.

Said order of confirmation is set out as Exhibit "D" to the agreed statement of facts, and it recites on its face that the said County Court of Carter County is the successor in jurisdiction to the United States Court for the Southern District of Indian Territory, to confirm said sale, and it bases its jurisdiction to do so on that ground.

After the entry of this order of confirmation, and on the 5th day of August, 1913, a second deed was executed by the said William M. Patterson, as guardian of the other respondents herein, in favor of your petitioner.

It is admitted that the proceedings for the APPOINTMENT of William M. Patterson as guardian were had prior to statehood in the United States Court for the Central District of Indian Territory, sitting at Durant, in what after statehood became Bryan County, Oklahoma.

It is admitted that all of the proceedings FOR THE SALE OF THE PROPERTY INVOLVED HEREIN BY SAID GUARDIAN were had in the United States Court for the Southern District of Indian Territory, sitting at Ardmore, in what after statehood became Carter

County, Oklahoma, the Southern District of Indian Territory being the district in which the lands sought to be sold were located.

It is admitted that all of the papers pertaining to the appointment of the guardian were, with the coming of statehood, transmitted to the County Court of Bryan County, and all of the papers pertaining to the sale of said lands and on file in the United States Court for the Southern District were transmitted to the County Court of Carter County, and said papers were on file in said county at the time of the confirmation of said sale by the County Court of Carter County.

The fourteenth paragraph of the agreed statement of facts reads as follows:

"That appraisers were appointed, appraisement was had, bonds were filed, notices were given and sale was held, reports were filed, deeds were executed and confirmation was had at the times, places and in the manner in the orders, reports, deeds and judgment, attached hereto as exhibits, ordered set forth and recited."

By reference to these various documents, a more comprehensive knowledge of these proceedings can be had.

The judgment of the trial court, as we have previously seen, was to the effect that the United States Court for the Southern District of Indian Territory had juris-

diction to make the sale, and that the County Court of Carter County inherited that jurisdiction and had jurisdiction to confirm the sale. This judgment was originally affirmed by the Supreme Court of Oklahoma, but the final judgment of the Supreme Court of Oklahoma on rehearing was, in effect, to deny the jurisdiction of the United States Court for the Southern District to make the sale, and to deny the jurisdiction of the County Court of Carter County to confirm such sale, and said opinion further holds that it would have been necessary that the original sale made under the orders of the United States Court for the Southern District of Indian Territory be confirmed within one year from date of sale, and that the date of the sale would be the date of the order of confirmation, instead of the order of confirmation becoming effective as of the date of the sale.

In all of these holdings we believe that the Supreme Court of Oklahoma has erred.

Jurisdiction of United States Court for Southern District of Oklahoma.

The Congress of the United States, by the Act of May 2, 1890 (26 Stat. 81), extended in force in Indian Territory Chapter 73 of Mansfield's Digest of the laws of the State of Arkansas, and it was this chapter of Mansfield's Digest which governed the appointment of guardians and guardianship sales in Indian Territory at

the time of the appointment of William M. Patterson as guardian, and at the time when the proceedings for the sale of the property herein were had.

Inasmuch as the validity of the appointment of William M. Patterson as guardian is conceded by both parties, that phase of the case will not be discussed.

The first question which presents itself, and which must be determined in order that the Court may arrive at a judgment herein, is this: "Did the United States Court for the Southern District of Indian Territory have jurisdiction, under the chapter of the laws of Arkansas previously mentioned, to order this sale?"

We think that on this point there can be no question.

It will be borne in mind by the Court that the lands involved herein were located in the Southern District of Indian Territory.

Sections 3509, 3510 and 3511 of Mansfield's Digest, being a portion of Chapter 73 hereinbefore referred to, read as follows (italics ours):

> "Sec. 3509. When it shall appear that it would be for the benefit of a ward that his real estate, or any part thereof be sold or leased, and the proceeds put on interest, or invested in productive stocks, or in other real estate, his guardian or curator may sell or lease the same accordingly *upon obtaining an*

order for such sale or lease from the court of probate of the county in which such real estate, or the greater part thereof shall be situate.

"Sec. 3510. To obtain such order, the guardian or curator shall present to the court a petition setting forth the condition of the estate and the facts and circumstances on which the petition is founded.

"Sec. 3511. If, after a full examination on the oath of creditable and disinterested witnesses, it appears to the court that it would be for the benefit of the ward that the real estate, or any part of it, should be sold or leased, the court may make an appropriate order for such sale or lease, under regulations and conditions, subject to the provisions of this chapter in relation to the sale of real estate of minors, as the court shall consider suited to the case, first requiring the guardian or curator to enter into good and sufficient bonds to make such leases and conduct such sales with fidelity to the interest of his ward and faithfully to account for the proceeds of such sale and leases according to law and as the order of the court may require."

It will be noted from the reading of the foregoing portions of Chapter 73 of Mansfield's Digest of the Laws of Arkansas that the guardian is to go into the county where the lands are located, as distinguished from the county in which the guardianship proceeding itself may be pending and obtain an order for the sale of the lands of his wards from the probate court of that county, and not from the court of the county in which the guardian may have been appointed.

It will be further noted that it is this Court which is

to make a full examination of witnesses and determine whether or not it is advisable to sell the property, require the necessary bond and conduct the proceedings generally in the case.

We assume that it was thought by the framers of this legislation that the court of the county in which the lands were located would in all probability be more familiar with their value, and consequently that it would be in a position to order and direct the sale to better advantage than would a court in some distant county.

Fortunately, this Arkansas statute was construed by the Supreme Court of the State of Arkansas prior to its adoption and extension in force in Indian Territory, and we here again assert that this construction was adopted along with the statute itself, and we again respectfully direct the court's attention to the authorities cited in our discussions of proposition number five.

This construction was had in the case of *Reid et al. v. Hart*, 45 Ark. Rep. 41. This decision was handed down in the May term of 1885, while the statute was adopted in Indian Territory on May 2, 1890.

We take the liberty of quoting the following extracts from the body of this opinion (the italics, with the exception of the first, are ours):

"There had, however, been provisions made for

the sale of lands, on the application of administrators and executors, for the payment of debts. They were adopted early in our state history, being found in the Revised Code (Sec. 147), and remained in force until the adoption of the Civil Code of 1868. They required that the application for such an order should be made to the probate court of the county *in which the lands are situate*. The Act of Dec. 23, 1846, enlarged the scope of purposes for which such sales might be made and associated 'guardians' with personal representatives (*ubi supra*), but made no change as to the tribunal. It may fairly be inferred that, by this association, the legislature contemplated that guardians should conform to the same rule, and make their applications for the sale of lands in the county where they lay. This view derives strength from a supplemental or cumulative act on the same subject, approved January 17, 1855 (Gould's Digest, p. 135), in which guardians are again grouped with personal representatives, and it is provided that the sales shall be ordered whenever it is made to appear to the satisfaction of the probate court of *'the proper county.'* * * * *The idea that applications for sales by guardians should be made to the forum where the lands lie seems to have survived the code.* At a session of the Legislature held in November, 1868, the passage of some chapters of what was intended to be a general code of laws was attempted. By the 23d section of the chapters on 'curators, guardians and wards,' it was provided that real estate of minors might be sold, whenever it might appear to be for his benefit to do so in order that the proceeds might be re-invested; and that his guardian or curator might obtain an order for the purpose 'from the circuit court of the county in which such real estate, or the greater part of it, might be situated.' This 'Digest,' as it was called, did not take effect, having been rejected by

this Court on constitutional grounds affecting the mode of its adoption. *Vinsant* v. *Knox*, 27 Ark. 266, but it is indicative of the prevalent legislative sense, at the time, of the proper practice, or rather the better policy, as to the forum to be adopted in such cases. It is noteworthy, too, that five years afterwards, by act of April 22, 1873, the same section was re-enacted. Pamphlet Acts of 1873, p. 194. This last statute, it is true, did not affect this sale, which was ordered in 1871, but it goes somewhat to fortify the idea that the continued policy for the state was and had been to leave the jurisdiction in such matters, where, by strong inference at least, it had been originally placed by the act of 1846. *This is law to this day, and has been brought forward into Mansfield's Digest, Sec. 3509. This displays a system by which we endeavor to supply the omission in the act of 1846, which fails to designate the probate court meant, by reasoning from the organic unity of the whole system.*"

We have, then, not only the Arkansas statute which is plain and unequivocal in its terms, but the construction of that statute by the highest tribunal of the State of Arkansas prior to its adoption and extension in force in Indian Territory, and it would appear that there can be no question but that the jurisdiction was in the Arkansas county in which the lands were situated, and not in the county in which the guardian himself might have been appointed.

Now, with this fact in mind, we again call the court's attention to the provisions of the Congressional Enact-

ment of May 2, 1890 (26 Stat. 81), extending the aforesaid Arkansas Statute in force in Indian Territory, and especially do we direct the court's attention to the provisions of Sections 30 and 32 of said act. Section 30 subdivides Indian Territory into three judicial divisions, designating them as the first, second and third divisions.

By the subsequent act of March 1, 1895 (28 Stat. 693), the names of these divisions were changed to the Northern, Central and Southern Judicial Districts, and their jurisdiction more clearly defined and it was these United States Courts which had jurisdiction in applying these Arkansas guardianship laws in Indian Territory.

Section 32 of said Act of May 2, 1890 (26 Stat. 81), specifically provides that the word "*county*" as used in any of the laws of Arkansas which are put in force in Indian Territory by the provisions of said act, and this includes Chapter 73 of Mansfield's Digest, shall be synonomous with the words "*Judicial Division*" in Indian Territory. This section reads as follows:

> "That the word 'county,' as used in any of the laws of Arkansas which are put in force in the Indian Territory by the provisions of this act, shall be construed to embrace the territory within the limits of a judicial division in said Indian Territory; *and whenever in said laws of Arkansas the word 'county' is used, the words 'judicial division' may be substituted therefor, in said Indian Territory, for the purposes of this act.*

> "And whenever in said laws of Arkansas the word 'State,' or the words 'State of Arkansas' are used, the word 'Territory' or the words 'Indian Territory,' may be substituted therefor, for the purposes of this act, and for the purpose of making said laws of Arkansas applicable to the said Indian Territory.
>
> "But all prosecutions therein shall run in the name of the 'United States.'"

In the case of *McHarry* v. *Eatman*, 29 Okla. 46, 116 Pac. 935, the Supreme Court of Oklahoma, in construing Chapter 73 of Mansfield's Digest of the Laws of Arkansas, which we now have under consideration, and in applying the same to Indian Territory, uses this language:

> "Prior to statehood there were no county divisions or county government in the eastern part of the state of Oklahoma, then known as the 'Indian Territory.' Under the court government of that country then existing, the territory was divided into judicial districts, which corresponded to county divisions of the State of Arkansas, at least as far as the jurisdictions of the courts were concerned."

This last mentioned case further holds that the United States Court for the Southern District of Indian Territory would even have had power to appoint a guardian for the minor children of Emma Patterson, because their land was situated in the Southern District. On this point, we take the following language from this opinion:

> "It is a matter of common knowledge that in the division of the property of the Five Civilized

Tribes, the children taking an equal part thereof with the parents, a large per cent of the property in the eastern district of the state was, and is now, owned by minors, and that the domicile of the minor and the location of his allotment or estate is often widely separated. This condition, of course, brought the question squarely to the court as to whether it would not be more economical and less expensive to the estate of the minor to appoint curators or guardians for his estate in the district where his land was located. There was nothing in the statute expressly forbidding that this be done, and these conditions doubtless gave rise to the practice."

As showing the intent of Congress that the Arkansas county divisions and the Federal judicial district divisions in Indian Territory should be construed as synonmous in applying the laws of Arkansas to Indian Territory, we direct the Court's attention to another Act of Congress, that of February 19, 1903 (32 Stat. 841), extending Chapter 27 of Mansfield's Digest of the laws of Arkansas in force in Indian Territory, where it is again said:

> *"That wherever in said chapter the word 'county' occurs there shall be substituted therefor the word 'district,' and wherever the words 'state' or 'State of Arkansas' occur there shall be substituted therefor the words 'Indian Territory.'"*

We further direct the Court's attention to the Act of Congress of April 28, 1904 (33 Stat. 573), from which we quote as follows:

"All the laws of Arkansas heretofore put in force in the Indian Territory are hereby continued and extended in their operation, so as to embrace all persons and estate in said territory, whether Indian, freedman or otherwise, and full and complete jurisdiction is hereby conferred upon the district courts in said territory in the settlements of all estates of decedents, the guardianships of minors and incompetents, whether Indians, freedmen or otherwise."

See also the case of *James E. Whitehead* v. *James O. Galloway et al.*, 249 U. S. 79, 63 L. ed. 490.

In the light of the foregoing statutes and authorities, we respectfully submit that there can be no question of doubt but that the United States Court for the Southern District of Indian Territory had full power and authority to order, direct and confirm the sale of the lands involved herein, and that it was the only court which did have such power prior to the admission of Oklahoma as a state.

Jurisdiction of County Court of Carter County, Oklahoma, to Confirm Sale.

The question which now presents itself for our consideration is this:

"Did the County Court of Carter County, with the coming of statehood, acquire jurisdiction to confirm the sale previously made under the orders of the United States Court for the Southern District of Indian Territory?"

We contend that it did; the trial court held that it did; the Supreme Court first held that it did, but on final rehearing held that it did not, and in this holding we believe that it erred.

The Supreme Court of Oklahoma, in its holding, took the position that this jurisdiction was inherited by the County Court of Bryan County, Oklahoma, and that the jurisdiction so inherited was exclusive of the jurisdiction of every other county in the State of Oklahoma.

We respectfully submit that in so holding it erred.

In determining this question we must look to the provisions of the Federal Enabling Act and of the Constitution of Oklahoma, adopted pursuant thereto, under which Oklahoma was admitted as a state.

As we have already seen, this proceeding for the sale of these lands was pending in the United States Court for the Southern District of Oklahoma prior to statehood, and the entire proceeding had been completed when statehood intervened; even the petition for confirmation had been filed, and upon this petition the County Court of Carter County later acted in entering its order confirming that sale.

We contend that the Enabling Act and the provisions of the constitution provided and adopted a comprehensive plan for the transfer of all proceedings

pending in the courts of the United States in Indian Territory prior to statehood, to the courts of the State of Oklahoma, their successors in jurisdiction, and that the procedure so provided was mandatory and left no jurisdiction whatever in the agencies provided for the transmission of these cases to adopt or provide another or different procedure, or to send the pending cases to another or different jurisdiction from that provided in this procedure.

This necessarily was true, because any other procedure must necessarily have resulted in endless confusion in determining what courts should have jurisdiction, and how that jurisdiction should be acquired.

The procedure to which we refer is set out in Sections 19 and 20 of the Enabling Act, by which Oklahoma was admitted as a state (34 Stat. 267), and by the preamble and Sections 1, 2 and 23 of the Schedule to the Constitution of the State of Oklahoma, and these provisions were necessarily construed by the Supreme Court of Oklahoma in arriving at its determination that the County Court of Carter County did not take jurisdiction. As a matter of fact, the opinion specifically mentions Section 19 of the Enabling Act, and Section 23 of the Schedule to the Constitution.

The provisions of the Enabling Act, to which we have referred, read as follows:

"Sec. 19. That the courts of original jurisdiction of such state shall be deemed to be the successor of all courts of original jurisdiction of said territories and as such take and retain custody of all records, dockets, journals and files of such courts, except in causes transferred therefrom, as herein provided; the files and papers in such transferred cases shall be transferred to the proper United States Circuit or District Court, together with a transcript of all book entries to complete the record in such particular case so transferred.

"Sec. 20. That all causes, proceedings and matters, *civil or criminal, pending in the district courts of Oklahoma Territory, or in the United States courts in the Indian Territory, at the time said territories become a state*, not transferred to the United States Circuit or District Courts in the State of Oklahoma, *shall be proceeded with, held and determined by the courts of said state, the successors of said district courts of the Territory of Oklahoma*, and the United States courts of the Indian Territory, with the right to prosecute appeals or writs of error to the supreme or appellate court of said state, and also with the same rights to prosecute appeals or writs of error from the final determination in such cases made by the supreme or appellate court of such state to the Supreme Court of the United States, as is provided by law for appeals and writs of error from the supreme or final appellate court of a state to the Supreme Court of the United States. All criminal cases pending in the United States Courts in the Indian Territory, not transferred to the United States Circuit or District Courts in the said State of Oklahoma, shall be prosecuted to a final determination in the state courts of Oklahoma, under the laws now in force in that territory."

The provisions of the Constitution of the State of

Oklahoma, to which we refer, are set forth in the following language:

"In order that no inconvenience may arise by reason of a change from the forms of government now existing in the Indian Territory and in the Territory of Oklahoma, it is hereby declared as follows:

"Section 1. No existing RIGHTS, ACTIONS, SUITS, proceedings, contracts or claims shall be affected by the change in the forms of government, but all shall continue as if no change in the forms of government had taken place. And all processes, which may have been issued previous to the admission of the state into the Union under the authority of the Territory of Oklahoma, or under the authority of the laws in force in the Indian Territory, shall be as valid as if issued in the name of the state.

"Section 2. All laws in force in the Territory of Oklahoma at the time of the admission of the state into the Union, which are not repugnant to this constitution, and which are not locally inapplicable, shall be extended to and remain in force in the State of Oklahoma until they expire by their own limitation or are altered or repealed by law.

* * * * * * *

"Section 23. When this constitution shall go into effect the books, records, papers and proceedings of the probate court in each county, and all causes and matters of administration and guardianship, and other matters pending herein, shall be transferred to the county court of such county, except of Day County, which shall be transferred to the County Court of Ellis County, *and the county courts of the respective counties shall proceed to final decree or judgment, order or other termination in the said several matters and causes as the said probate*

court might have done if this Constitution had not been adopted. The district court of any county, the successor of the United States Court for the Indian Territory, in each of the counties formed in whole or in part in the Indian Territory, shall transfer to the county court of such county all matters, proceedings, records, books, papers and documents appertaining to all causes or proceedings relating to estates: Provided, that the legislature may provide for the transfer of any of said matters and causes to another county than herein prescribed."

see also sec. 27

It is only necessary to read the foregoing provisions to determine that they fully cover and provide for the transfer of cases such as this now before the Court.

Under this procedure there was no option whatever in the United States Court for the Southern District of Indian Territory as to where it would transfer the causes pending before it. With the coming of statehood this court sat at Ardmore, Oklahoma, and under this procedure it passed the jurisdiction of this case to the district court, which in turn, under the provisions of the same acts, handed the probate jurisdiction on down to the County Court of Carter County.

By this course the case at bar was transmitted to the County Court of Carter County, and with it were transmitted all of the papers pertaining to the sale of this property. Under this procedure there was no place else to send them.

The Court can readily see the confusion which would have arisen if any option had been left in either the United States District Court or the State District Court to hand these cases down in any manner other than by a fixed and arbitrary procedure.

Exactly the same procedure governed the United States Court for the Central District of Indian Territory in passing down the papers pertaining to the appointment of William M. Patterson as guardian; the papers pertaining to the *sale were not in the Central District and could not be handed down by the Federal Court of that district to its successor.*

The only proceeding which was ever pending in the Central District was the proceeding for the *appointment* of Patterson as guardian of his minor children, and these papers were, by the procedure here provided, arbitrarily handed down from the United States Court of the Central District to the District Court of Bryan County, and by it passed on down to the county or probate court of that county.

So that by the procedure provided by Congress in the Enabling Act aforesaid, and the procedure outlined in the constitution, accepting said Enabling Act, we find that with the coming of statehood one branch of this proceeding was automatically placed in the County

Court of Bryan County, while another was by the same procedure placed in the County Court of Carter County, Oklahoma.

We do not contend that this procedure gave to the County Court of Carter County, Oklahoma, equal jurisdiction in all things in this guardianship proceeding with the County Court of Bryan County, Oklahoma, because its successor, the United States Court for the Southern District of Indian Territory, never had equal jurisdiction. *What it did have, however, was the sole and exclusive jurisdiction to complete this guardianship sale, and that jurisdiction was, by the procedure herein pointed out, transmitted to its successor, the County Court of Carter County, Oklahoma.* When that jurisdiction was exercised by the confirmation of the sale previously ordered by its successor, the jurisdiction of the County Court of Carter County, Oklahoma, was terminated, but it was not terminated until it had exercised that jurisdiction.

Congress realized that this procedure would result in transferring certain pending cases to courts other than those which would have had jurisdiction, had the cases been filed as new proceedings after statehood, and so did the Constitutional Convention, which drafted the Constitution of Oklahoma, accepting the provisions of the Enabling Act, have this in mind.

This is shown by the fact that in the last portion of Section 23 of the Schedule to the Constitution we find the following language:

> "The district court of any county, the successor of the United States Court for the Indian Territory, in each of the counties formed in whole or in part in the Indian Territory, *shall transfer* to the county court of such county all matters, proceedings, records, books, papers and documents appertaining to all causes or proceedings relating to estates: *Provided, that the legislature may provide for the transfer of any of said matters and causes to another county than herein prescribed.*"
> The italics in the above quotation are ours.

We have specifically directed the Court's attention to this provision, because it shows conclusively that it was fully realized that situations such as this would arise, and a means was provided whereby the proceeding could be transferred to the court that would have had jurisdiction had the proceeding been filed after statehood, should the legislature see fit to make provisions therefor. The court will note that this transfer was not to be made automatically, but the legislature was merely given power to provide for such a transfer.

In 1908 the Legislature of Oklahoma enacted a law which provided a means for the transfer of such cases, but this law was not self executing; it merely provided that any one interested in the proceeding might go into the county court to which the cause was transferred and

file his petition with that court for the transfer of the cause to some other court, and if no one ever filed such a petition the cause continued in the jurisdiction to which it was transferred by the provisions of the Enabling Act and Constitution.

This was so held in the case of *Eaves* v. *Mullen*, 25 Okla. 679, 107 Pac. 433. From the opinion in which case we quote at length as follows:

> "Counsel for plaintiff in error, however, contends that the jurisdiction of the County Court of Carter County, over the guardianship proceedings involved in this cause, had, prior to the order of sale thereon, been terminated by two certain acts of the legislature. Section 1 of an act of the legislature approved December 21, 1907-8, p. 205, as amended by an act of the legislature approved March 12, 1908 (Sess. Laws 1907-8, p. 212), provides: 'That all those civil cases transferred from the courts of the Territory of Oklahoma *and the United States Court in the Indian Territory to the courts of this state as transferred by Act of Congress and accepted by the constitution, which would have been properly triable in any court, or county or district of this state, had such suit or proceeding been commenced after the admission of this state into the Union, including records formerly belonging to the United States Commissioners' courts and all papers of mayors of cities and* incorporated towns having and exercising an ex officio jurisdiction as United States Commissioners in that part of the state formerly known as the Indian Territory, that may be in the hands of the clerks of the various district courts of that portion of the state, *may, including probate matters, by any*

person having a substantial interest therein, on petition verified by the affidavit of the applicant or his attorneys of record, filed with the judge or clerk of the court where such cause is pending within sixty days after the passage and approval of this act, be transferred to the proper courts of such county or district, and that all books, records, pending cases, papers, proceedings, liens, judgments and executions pending in a justice of the peace court of any county are hereby transferred to some justice of the peace court of the county in which, if originally brought in said court, the defendant lives, or the defendant has property, *and when such records are transferred as above provided for, said court shall have full and complete jurisdiction of all cases and proceedings so transferred;* provided, that all transfer of cases, papers, books, proceedings, made or attempted to be made by mayors or incorporated towns to the proper court are hereby legalized and made valid.'

"That statute applies to all cases transferred from United States courts of Indian Territory to any of the courts of the state. By specific provisions, it includes probate causes; it authorizes the transfer of any of such cases from the court wherein it was pending by reason of the enabling act and the schedule to the constitution to that court which would have had jurisdiction, had the proceeding been instituted since the admission of the state. The transfer is authorized to be made upon application of any person having a substantial interest therein, by petition, verified by his affidavit, or by affidavit of his attorney of record; *but the statute does not make it mandatory on the persons interested to make such application, nor does it provide that the cause shall be transferred without such application.* We cannot therefore concur in the contention of counsel that the effect of this statute was to oust the County

Court of Carter County of jurisdiction. No petition was ever filed by any one with the county court of that county before the application for the order of sale was made, or at any other time so far as the records disclose, asking for a transfer of the cause to the County Court of Johnston County, or of any other county. If it had been intended to provide by this statute that all causes, civil or criminal, shall be transferred to the county that would have had jurisdiction if they had been instituted since the admission of the state, why was the transfer authorized to be made only upon application of 'any person having a substantial interest therein,' or the criminal cases 'upon the application of the defendant therein'? If it had been intended that the court in which any such cause was pending should have no further jurisdiction therein after the passage of the act, except to transfer it, we think the legislature would have provided that the transfer of such cases should be made by the court upon it appearing from any source that such cause was one that would have been cognizable in the court of another county, if it had been instituted since statehood.

"The amendatory act, also by language very similar to the language of Section 1, further provides for the transfer of criminal cases from the court of any county or district in which the same is pending to the court of a county or district in which the case would have been properly triable if it had been commenced after the admission of the state. If it was intended that the courts in which these civil and criminal proceedings were pending should lose all jurisdiction thereof, whether application for a transfer was made or not, then these acts placed it within the power of each defendant in a criminal case to defeat the prosecution against him, because the court is not authorized to make the transfer except upon this application. The defendant would be able to

free himself from prosecution. *We think no such meaning can be attributed to these statutes, but that it was intended only to give the parties interested in civil and criminal causes the opportunity to have them proceeded with and finally determined, either in a court of the county or district in which the said cause has been transferred by the provisions of the Enabling Act, and of the Constitution, or in the court of the county in which it should have been instituted if it had originated since statehood, according as the convenience and interest of the parties interested might lead them to choose.*"

This case clearly supports our contention that until, and unless, a petition for the transfer of this proceeding now under consideration from the County Court of Carter County, Oklahoma, to the County Court of Bryan County, Oklahoma, was filed by some interested party, and the cause transferred before the exercise by the County Court of Carter County, Oklahoma, of its jurisdiction to confirm, that such jurisdiction continued in said court. No such petition was filed, and the jurisdiction was still in said court at the time of the entry of the order of confirmation.

The provisions of both the Enabling Act and the Constitution clearly show that it was the intent and purpose that all proceedings pending in the United States courts should be transferred to the courts of the state, their successors in jurisdiction, with as little confusion as possible, and to this end the exact procedure for the

transfer of these causes is provided, and the courts which are to have jurisdiction after statehood are specifically pointed out. To use the phraseology of the Preamble to the Constitution, we have the following language:

> "In order that no inconvenience may arise by reason of a change from the forms of government now existing in the Indian Territory and in the Territory of Oklahoma, it is hereby declared as follows:"

Then follows Section 1 of the Constitution to the following effect:

> "No existing RIGHTS, ACTIONS, SUITS, proceedings, contracts or claims shall be affected by the change in the forms of government, but shall continue as if no change in the forms of government had taken place."

The Enabling Act is in the nature of a proposition setting forth the terms upon which these proceedings may be transferred, while the provisions of the Constitution constitute an acceptance of those terms; the two, in effect, constituting a contract between the State and the Nation.

If no change in government had taken place, the United States Court for the Southern District of Indian Territory would have confirmed the sale of the property herein, and the title of your petitioner would have been absolute. When the change in government occurred, automatically transferring the jurisdiction of this court to

the County Court of Carter County, Oklahoma, unquestionably the county court of that county inherited the jurisdiction to complete the proceeding by confirming the sale, otherwise Section 1 of the Constitution, quoted *supra*, to the effect "that all pending actions shall proceed as though no change in government had taken place" is meaningless; for how can it be said that existing rights, actions, suits or proceedings are not affected, if the very agency provided by those provisions of the Constitution and Enabling Act to complete the pending proceeding be now held to have no such power, and if its orders, made in an effort to complete such proceedings, are now held to be a nullity.

The County Court of Bryan County, Oklahoma, could not have inherited the jurisdiction to complete this sale under the procedure laid down by the Enabling Act and Constitution, because, as we have previously seen, its predecessor, the United States District Court for the Central District of Indian Territory itself had no such jurisdiction, and it certainly could not transmit to its successor a greater and broader jurisdiction than it had.

The only way that the County Court of Bryan County could acquire jurisdiction to complete this proceeding was by transfer of this branch of the proceeding from the County Court of Carter County, Oklahoma; no such

transfer was ever had until long after the order of confirmation was entered by the County Court of Carter County, Oklahoma.

The Supreme Court of Oklahoma, in the case of *Dewalt v. Cline*, 35 Okla. 197, 128 Pac. 121, speaking through Judge Williams, now United States District Judge for the Eastern District of Oklahoma, in interpreting Section 23 of the Schedule to the Constitution, quoted *supra* says:

> "Section 23 of the schedule, *supra*, contemplated that such pending probate proceedings should continue to final determination just as if there had been no change in the form of government."

The proceedings for the sale of the lands involved herein by guardian were, at the time of the admission of Oklahoma as a state, pending in the United States Court for the Southern District of Indian Territory, and in no other district. This Court sat at Ardmore in what after statehood was Carter County, Oklahoma.

Under this state of facts, the decision of the Supreme Court in the case of *Bailey v. Jones*, 96 Okla. 56, 220 Pac. 345, is applicable. We take the following language from the decision of the court in this case:

> "A county court, to which had been transferred an administration proceeding that would have been properly triable in the court of another county, had such proceeding been instituted since the admission

of the state, was not by reason of the act of the legislature approved March 12, 1908 (Sess. Laws 1907-8, p. 212; Comp. Stat. 1921, Sec. 3168), ousted of jurisdiction of said proceeding where no application for a transfer thereof was ever made by any of the parties having a substantial interest therein.

"An administration proceeding, pending in one of the United States courts of the Indian Territory at the time of the admission of the state into the Union, was, by virtue of the Enabling Act, Sec. 19 (34 Stat. 277), and Schedule of the Constitution, Section 23, transferred to the county court of the county in which was located the court in which said proceeding was pending."

See, also, *Eaves v. Mullen*, 25 Okla. 679, 10 Pac. 433, and *Davis v. Carothers*, 22 Okla. 325, 97 Pac. 581.

As we have previously said, it is our contention that the provisions of the Enabling Act and the Constitution, governing the transfer of these pending proceedings, are *mandatory*.

Quoting again from Section 23 of the Constitution of the State of Oklahoma, we find this language (italics ours):

"The District Court of any county, the successor of the United States Court for the Indian Territory, in each of the counties formed in whole or in part in the Indian Territory, *shall transfer to the county court of such county all matters, proceedings, records, books, papers and documents appertaining to all causes or proceedings relating to estates.*"

We contend that the foregoing quotation left no option whatever in the District Court of Carter County as to where it would transfer this Patterson guardianship case when the United States Court for the Southern District of Indian Territory handed it over to it, but that it made it absolutely mandatory on that court to pass the proceeding on down to the County Court of Carter County, Oklahoma.

In this position we are sustained by the decision of the Supreme Court of Oklahoma in the case of *Davis v. Carathers*, 22 Okla. 323, 97 Pac. 581, from which we take the following language:

> "The District Court, as the successor of the United States Court in the Indian Territory at Sapulpa, had no original probate jurisdiction whatever, and had no authority to continue to administer probate matters, except on appeal to such court. *The provisions of Section 23 of the Schedule, supra, are mandatory upon the District Court, as the successor of said court in such county in which the United States Court was located, to transfer to the County Court of said county all matters, proceedings, books, records, papers and documents pertaining to all original causes or proceedings relating to estates.*"

See, also, *Board of Commissioners v. Coler & Co.*, 180 U. S. 506, 45 Law ed. 643, holding that the construction is binding on the United States Courts.

There had been no proceedings in the United State

Court for the Judicial District of Indian Territory relating to the sale of this land, there were no papers or documents pertaining to the said sale in the files of that court; in fact, it had no jurisdiction in order to make the sale, or to confirm it after it was made; that certainly there was no procedure provided by the Constitution and Enabling Act by which that court could transfer a proceeding over which it had no jurisdiction to the County Court of Bryan County; there was no procedure by which the County Court of Bryan County could get the papers and documents pertaining to this guardianship, provided by the Constitution and Enabling Act, it is not to be supposed that the Enabling Act and the Constitution contemplated that proceedings of this nature would simply be abandoned in midstream, because Section 1 of the Constitution, quoted supra, says, "That they shall continue as though no change in the form of government had taken place."

Now, this being true, and the law having specifically placed the case in the County Court of Carter County, where was the case to continue as though no change in the form of government had taken place if not in the court to which it had been thus transferred?

If, as we think, it makes no difference how many courts had jurisdiction of different branches of this guardianship proceeding before statehood, each

court transmitted to its successor in the manner provided by law the jurisdiction which it possessed, or rather the branch of the proceeding pending in it, and it seems to us that the provisions of the Constitution and Enabling Act would be utterly ineffective if the courts to which these branches of these proceedings were transferred did not succeed to the same jurisdiction of their predecessors.

After this particular proceeding, which was pending in the United States Court of the Southern District with the coming of statehood, and which was transferred to the County Court of Carter County, was finally terminated by the entry of the order of confirmation, the County Court of Carter County automatically ceased to have any further jurisdiction over the estate of said minors; *its jurisdiction being only an ancillary jurisdiction to complete the pending proceeding which was cast upon it by the provisions of the Constitution and Enabling Act, it ceased to have any further jurisdiction the moment that function had been performed and that pending sale had been confirmed.*

We respectfully submit that the court erred in concluding that the County Court of Carter County, Oklahoma, did not succeed to the jurisdiction of the United States Court for the Southern District of Indian Territory to confirm the sale made under the order of that court.

Not Necessary That Sale Be Confirmed Within One Year From Date of Order.

There is one other phase of this opinion of the Supreme Court of Oklahoma, dealing with the subject of the confirmation of this sale, which we deem it necessary to notice, and that is this:

The Supreme Court of Oklahoma in its opinion holds that it was necessary that there be a sale of this property within one year after the order of sale was sued out in the United States Court for the Southern District of Oklahoma, and that inasmuch as the confirmation of the sale was not had or made by the County Court of Carter County until more than one year after the date of the order of sale, that there was no sale within a year, and that the sale would be considered as having been made on the date of the order of the confirmation, instead of the order of confirmation becoming effective as of the date of the sale.

The agreed statement of facts, and the exhibits thereto attached, upon which this case was tried, show that the order of sale was issued out of the United States Court for the Southern District of Oklahoma on the 2nd day of May, 1907; that the sale was made under said order on the 5th day of July, 1907; that the first deed was executed on the 5th day of October, 1907, and that the report of sale and petition for confirma-

tion was filed in that court on the 8th day of October, 1907.

The fact is that more than a year elapsed after the date of the order of sale before the sale was confirmed.

The Supreme Court of Oklahoma arrives at this opinion by attempting to apply to this situation Section 1479 of the Compiled Oklahoma Statutes of 1921, which reads as follows:

> "Order in force for one year. No order of sale granted in pursuance of this article (Chapter) continues in force more than one year after granting the same, without a sale being had."

But we respectfully submit that this statute is wholly inapplicable to this case, for the reason that Section 1 of the Constitution, quoted *supra*, says, "that this pending proceeding shall continue to completion as though no change in government had taken place," and how could it be said that this pending proceeding did continue to completion *as though no change in government had taken place if a statute of Oklahoma enacted after statehood be construed to relate back and govern the completion and confirmation of this sale?*

We respectfully submit that in arriving at its conclusion on this point the Supreme Court erred, and that there are two insurmountable obstacles which preclude

the possibility of its conclusion on this point being correct.

The first one is "that the Supreme Court of Oklahoma has overlooked the fact *that the sale in question was had under and pursuant to the provisions of Chapter 73 of Mansfield's Digest of the laws of Arkansas*, and not under and pursuant to the laws of the State of Oklahoma.

The second, and even more conclusive reason is "that if the section referred to by the Supreme Court of Oklahoma in its opinion was at all applicable to this sale, it would in no manner affect the same, *for the reason that a sale was had within one year after the entry of the order directing the sale*, and both the deed and order of confirmation so recite.

As we have previously seen, this entire guardianship sale had been completed in the United States Court for the Southern District of Indian Territory, under Chapter 73 of Mansfield's Digest of the Laws of Arkansas as extended in force in Indian Territory prior to statehood, and only one act remained to be done to complete title, and that was the confirmation of the sale.

The provisions of the Constitution and Enabling Act, cited *supra*, say "that this proceeding shall be con-

pleted as though no change in government had taken place," and there is not one line in the statutes of Arkansas which provide that an order of confirmation shall be entered within any specific period of time after the order of sale shall have been sued out, but there are numerous decisions holding that the order of confirmation when made, relates back and becomes effective as of the date of the sale.

We direct the Court's attention to the case of *Brack v. Macon*, 90 Ark. 324, 13 S. W. 458, and the cases there cited.

But, as we have previously pointed out, this sale actually did take place within one year after the entry of the order directing the sale. As a matter of fact, the entire proceeding, down to and including the filing of the report of sale and petition for order of confirmation, was completed during the period from April, 1907, to October, 1907, and the only way that the Supreme Court of Oklahoma could arrive at its decision was to hold that there was no sale until the order of confirmation was entered and that the sale took place as of that date, instead of holding that the order of confirmation related back and became effective as of the actual date of sale.

This holding is in absolute conflict with the former

decisions of the Supreme Court of Oklahoma not herein overruled, and absolutely inconsistent therewith.

We direct the court's attention to the former decisions by the Supreme Court of Oklahoma on this subject, in the case of *Hickory et al. v. Campbell et al.*, 75 Okla. 79, 182 Pac. 233, from which we take the following language:

> "The court, in hearing the issue whether or not the value of the land sold is disproportionate to the amount of the bid, should confine the evidence as to its value on day of sale, and not as of its value on day of confirmation."

See also the case of *Shoals F. Freeland*, 91 Okla. 238, 217 Pac. 176, where the Supreme Court of Oklahoma uses this language:

> "In a guardian's sale of an interest in oil and gas royalties, the successful bidder is bound by the bid, and after confirmation of the sale is liable to pay the amount of the bid, even if there is a depreciation in the value before the order of confirmation is entered of record and before guardian's deed is executed."

In the last mentioned case the Supreme Court of Oklahoma refers to the case of *Morrison v. Burnette*, by the United States Circuit Court of Appeals for the Eighth Circuit, 154 Fed. 617, and adopted the decision of that court, and from that decision we quote as follows:

> "A successful bidder under an order or decree

of court at a sale which is subject to confirmation by the court, is a purchaser from the announcement of the sale to him by the officer, and may thereafter be compelled to complete his purchase."

The opinion further uses this language:

"On the other hand, the rule is without exception in the national courts, and it has been very generally adopted in the state courts, that the bidder at a sale by a master or receiver, under an order or decree which contemplates a subsequent report and confirmation of sale, becomes a purchaser when the officer announces the sale to him. Thereafter he is liable for and may be compelled to pay the purchase price which he bids. Thereafter he may be made to pay for the destruction or depreciation and may be permitted to reap the proceeds of the appreciation of the property."

Applying the foregoing rules as laid down by this court and by the United States Circuit Court, there was a sale of this property by Patterson to U. Sherman Joines, petitioner, the moment that the property was knocked down to him as the highest bidder.

We believe the Supreme Court of Oklahoma to be wholly in error in holding that this sale, had under the Arkansas Law in force in Indian Territory, must have been confirmed within one year.

The law on this subject generally is laid down in Section 95 at page 132 of Volume 16 of Ruling Case Law, dealing with the subject of judicial sales and the

confirmation thereof. This rule is laid down in the following language:

> "By the weight of authority, the confirmation of a judicial sale relates back to the day of the sale and passes title as of that day, the purchaser being entitled to everything he would have been entitled to if the confirmation and conveyance of title had been contemporaneous with the sale. His rights relate back to the date of sale, and he is then considered the owner from and after that date. So the deed which the judicial officer subsequently gives relates back upon delivery to the time of the contract of sale, which is the substantial thing in the transaction."

See, also:

> *Brock* v. *Money*, 99 Ark. 324, 13 S. W. 458.
> *Smith* v. *Newman*, 146 Ky. 80, 130 S. W. 953.
> *Wagner* v. *Cohen*, 6 Gill (Md.) 97, 46 Am. Dec. 660.
> *Cropper* v. *Brown*, 76 N. J. (Eq.) 406, 74 Atl. 987.
> *Jachnovsky* v. *Velrath*, 70 Ohio St. 340, 53 N. E. 46.

The same authority, Section 64, page 88 of Vol. 16, in dealing with the time within which confirmation shall be made, lays down the law as follows:

> "The fact that many years have elapsed since the judicial sale of land under a decree, without report and confirmation by the court, will not debar the purchaser on the principle of laches from having the court confirm the sale and execute its decree by a conveyance, though the case has been for many years omitted from the court docket, but

without any order of dismissal or discontinuance having been made. So a deed executed by commissioners appointed to sell a tract of land to satisfy a debt was held to vest the grantee with legal title to the property although the deed was not approved and confirmed for about twenty-nine years after the sale. This is the general rule as among the original parties where the rights of third parties have not intervened."

See, also:

McGinnis v. *Caldwell*, 76 S. E. 834-43, L. R. A. (N. S.) 630.
Hazlewood v. *Chrisman*, 62 S. W. 39.
Redus v. *Hayden*, 43 Miss. 614.
Evans v. *Spurgin*, 6 Gratt. 119-52 Am. Dec. 105.

We respectfully submit, therefore, that the Supreme Court of Oklahoma erred in holding that there was no sale in this case until the date of confirmation, and that it further erred in holding that the confirmation must have taken place within one year from the date of the order of sale.

We further submit that the authorities cited under this proposition establish beyond doubt our contention that the United States Court for the Southern District of Indian Territory had jurisdiction to order this sale, and that the County Court of Carter County, Oklahoma, inherited from it the jurisdiction to confirm the same, and that the title of your petitioner to the lands involved herein should, thus originating, be good.

Proposition No. 4.

The Supreme Court of Oklahoma erred in holding that under the provisions of the Federal statutes in force in Indian Territory prior to statehood, and the laws of Arkansas, extended in force in said territory and having the force of Federal statutes therein, that there was an intervening life estate outstanding in William M. Patterson not terminated by the Arkansas Statute of Limitations, as construed by the highest court of Arkansas before its adoption, which outstanding life estate would prevent the running of the Oklahoma two-year statute of limitations as against the respondents, Doroth A. Patterson and Shelby A. Patterson, who attained full age more than two years prior to the filing of this action.

Under this caption we will argue assignments of error Nos. 10 and 11, as set forth in the petition for review filed herewith.

By referring to the answer set forth in the transcript filed herewith and hereinbefore referred to, it will be noted that your petitioner pleads also the Oklahoma statute of limitations as a bar to the maintenance of their action by the respondents. Section 1058 therein referred to reads as follows:

> "Any person entitled to bring an action for the recovery of real property, or who may be under any legal disability when the cause of action accrues, may bring the action within two years after the disability is removed."

The stipulation upon which this cause of action was tried discloses that at the time of the filing of said cause of action Doroth A. Patterson and Shelby A. Patterson,

two of the respondents herein, under whom your petitioner claims, were of full age and had been for a period of more than two years preceding the filing of the action.

In determining that these two respondents were not barred by the Oklahoma statute of limitations, the Supreme Court of Oklahoma decided a Federal question, in that it held that the reason that the action was not barred by the Oklahoma statute was because there was an outstanding life estate in William M. Patterson which had not been terminated and which prevented the running of any statute of limitations as against the other respondents aside from William M. Patterson.

In determining this question, the Supreme Court of Oklahoma necessarily construed the Federal statute of May 2, 1890, and Chapters 20 and 49 of Mansfield's Digest of the Laws of Arkansas extended in force in Indian Territory by said Federal statute, and Section 22 of the Choctaw Chickasaw Supplemental Agreement, 32 Stat. 641, in holding that Patterson had a life estate; and it further construed Chapter 97 of Mansfield's Digest as extended in force by the aforesaid Act of May 2, 1890, in determining that the laws of Arkansas did not operate to terminate such estate.

The inference to be drawn from this decision of

the Oklahoma Supreme Court is that the statute would have operated against Doroth A. Patterson and Shelby A. Patterson had it not been for this intervening life estate outstanding in William M. Patterson by virtue of the Federal statutes and the Arkansas laws.

We have discussed under our Proposition No. 1 the question of the existence of this life estate, and under Proposition No. 2 we have discussed the application of the statute of limitations of Arkansas as set forth in Chapter 97 of Mansfield's Digest, and in so far as it affects William M. Patterson's right to maintain this action we refer to the authorities there cited.

We now desire to discuss the application of Chapter 97 of Mansfield's Digest of the Laws of Arkansas to the theory upon which the Supreme Court of Oklahoma decided that the Oklahoma statute did not run as against those of the respondents who attained full age more than two years before the filing of this suit.

As we have previously said, and as the opinion itself discloses, this holding was based on the theory that there was outstanding in William M. Patterson a life estate by curtesy, and that so long as this life estate was outstanding no statute of limitations would operate as against the other respondents herein. Clearly, if there was no life estate outstanding in William M. Pat

terson, the Oklahoma two-year statute of limitation quoted *supra* would operate to bar the right of action on the part of Doroth A. Patterson and Shelby A. Patterson.

We think that the Supreme Court of Oklahoma was in error in holding that the life estate ever existed, as we have already sought to establish by the long line of authorities cited under Proposition No. 1. We think it erred again in holding that if the cause of action ever existed in so far as William M. Patterson was concerned, that it was not barred by the Arkansas seven-year statute of limitations; and this we have sought to establish by the line of authorities cited in the argument under Proposition No. 2.

As we have previously said, Chapter 97 of Mansfield's Digest of the Laws of Arkansas had been construed by the highest court of Arkansas prior to its extension in force in Indian Territory, and we now assert that when adopted by Congress and extended in force in Indian Territory, it carried with it the construction previously placed upon it by the highest court of the state from which it was adopted. In support of this contention, we respectfully direct the court's attention to the authorities cited in this brief in the discussion of Proposition No. 5. We contend that the Arkansas seven-year statute of limitations, being Section 4471 of Mans

field's Digest of the laws of said state, not only created a bar which might be plead as a defense against any action on the part of William M. Patterson to recover a life estate in the lands involved herein, but that the running of said statute of itself created a title in U. Sherman Jones, your petitioner, which title might form the basis of an action of ejectment. In other words, it is our contention that as between your petitioner and the respondents herein, the running of this seven year statute served to create a title in this petitioner which effectually destroyed and wiped out the intervening life estate of William M. Patterson, if indeed he ever had a life estate.

In this connection we are sustained by a number of decisions from the highest court of Arkansas. We first direct the attention of the court to the case of *Ferguson v. Perdue*, 51 Ark. 180, from which we quote as follows:

> "Justice Cowen, in delivering the opinion of the court in *Humbert v. Trinity Church*, said: 'So long as a man is in possession of land, claiming title, however wrongfully, and with whatever degree of knowledge that he has no right, so long the real owner is out of possession, in a constructive as well as an actual sense. It is of the nature of the statute of limitation when applied to civil actions, in effect, to mature a wrong into a right, by cutting off the remedy. To warrant its application in ejectment, the books require color of title, by deed or other documental semblance of right in the defendant, *only when the defense is founded on a* [illegible]

structive adverse possession. But neither a deed nor any equivalent muniment is necessary where the possession is indicated by actual occupation, and any other evidence of an adverse claim exists. The muniment is but one circumstance by which to make out an adverse possession.'"

Following the foregoing opinion, and still more directly in point, is the case of *Jacks v. Chaffin et al.*, 34 Ark. 534, from which we quote:

"The weight of authority in the United States seems now in favor of the doctrine that possession of land during the full period of limitation, under such circumstances as would make a valid defense, amounts to an investiture of title; which may be actively asserted, in all respects as effectively as if acquired by deed (see cases referred to in Washburn R. Property, Book III, Chap. 11, Sec. 7, sub. sec. 48). This Court has repeatedly approved this view of the effect of the statute. It was applied to a case of personal property in *Hicks v. Flint*, 21 Ark., p. 463, and is announced, or underlies the reasoning in *Sharp v. Johnson*, 22 Ark. 79; *Walker v. Towns*, 23 Ark. 147; *Kirby v. Vantrue et al.*, 26 Ark. 368; *Mayo & Jones v. Cartright*, 30 Ark. 407; *Mooney et al. v. Coolidge, id.* 640; *Ferguson v. Pelts* (M. S.). The continuity of possession always insisted upon, has reference to the time during which the statute is running—and is not necessary after the bar has attached."

To the same effect is the case of *Logan et al. v. Jelks*, 34 Ark. 547, from the body of the opinion in which case we take the following language:

"Conceding the patent from the United States to

> have been void, it may be, nevertheless, used to give color of title and fix the limits of possession, and a continuous adverse possession under it, or without any color at all, when the limits of possession may be shown for a period of over seven years as against parties whose rights are not saved, will create a title which may be used to maintain an action of ejectment. This question has been directly decided in the case of *Jacks* v. *Chaffin*, at the present term, and the principles of that case govern this."

We might cite numbers of authorities from other jurisdictions to the same effect, but we do not deem it necessary to do so inasmuch as we take it that this construction by the Supreme Court of Arkansas was adopted along with the said Chapter 97 of Mansfield's Digest itself.

What we particularly wish to stress at this time is the fact that these cases uniformly hold that title by continuous adverse possession for seven years under this seven-year statute of limitations, now under consideration, of itself creates title in him who holds adversely, and this, even though his deed or instrument of title be absolutely void, and the holding is the same even though he possesses no color of title whatever.

In the case now before the Court your petitioner was in undisputed adverse possession of the lands in question for nearly twice the statutory period of seven years before any action was ever filed by the respondents. In

der the foregoing holdings of the Arkansas court this of itself created title in him, even if it be held that his deed was absolutely void; and this being true, the creation of title in him automatically terminated and put an end to the life estate of William M. Patterson, and there was no intervening life estate when Doroth A. Patterson and Shelby A. Patterson came of age to prevent the running of the Oklahoma Statute of Limitations as against them. The opinion of the Supreme Court of Oklahoma is therefore necessarily erroneous.

Hence it is our contention that even though the deed, under which your petitioner claims, is absolutely void, the Arkansas seven-year statute of limitations served to bar any recovery herein on the part of William M. Patterson; and that it also ran as against the other respondents herein, subject to their rights to bring their action within two years after coming of full age. Doroth A. Patterson and Shelby A. Patterson attained full age more than two years Before the filing of this suit, and their cause of action, if any, is therefore effectually barred.

Proposition No. 5.

When a statute of one state or nation is adopted by another state or nation, such adoption carries with it, and adopts, the construction given to such statute by the highest court of the state from which it was adopted, if it was construed by such court prior to such adoption.

While this proposition is not set out separate and apart in the assignments of error in the petition filed herewith, yet it has been referred to in a number of these assignments and is inextricably interwoven with all of them to such extent that we have deemed it advisable to discuss it separately, referring to the authorities here cited when it is necessary to discuss it in connection with the discussion of the assignments of error discussed under Propositions Nos. 1, 2, 3 and 4.

This proposition is of vital importance in this case, due to the fact that, as will have been seen from the propositions previously discussed, the Arkansas statutes extended in force in Indian Territory by Federal enactments prior to statehood had been construed by the Supreme Court of Arkansas prior to such extension; and it is upon these Arkansas statutes and the constructions placed thereon by the highest court of the state of Arkansas prior to their adoption, that the rights of the parties in this case are, to a large degree, based.

In the case of *Edward M. Willis and William G. John, Assignees, v. Eastern Trust and Banking Com-*

pany, 169 U. S. 295, 42 Law ed. 752, the Supreme Court of the United States lays down the rule as follows:

> "Where an Act of Congress has been taken from a state statute the known and settled construction which such statute has received in the state before the original enactment of the Act of Congress, must be considered as having been adopted by Congress with the text thus expounded."

This case is exactly in point in discussing the Arkansas statutes which were adopted by Congress and extended in force in Indian Territory prior to statehood.

To the same effect is the case of *Charles Warner v. Texas & Pacific Railway Co.*, 164 U. S. 416, 41 L. ed. 495. From the body of this opinion we take the following extract:

> "It thus appears to have been the settled construction of this clause of the statute in England, before the Declaration of Independence, that an oral agreement which, according to the intention of the parties, as shown by the terms of the contract, might be fully performed within a year from the time it was made, was not within the statute, although the time of its performance was uncertain, and might probably extend, and be expected by the parties to extend, and did in fact extend, beyond the year. The several states of the Union, in re-enacting this provision of the statute of frauds in its original words, must be taken to have adopted the known and settled construction which it had received by judicial decisions in England. *Tucker v. Oxley*, 9 U. S. 5 Cranch 34; *Peacock v. Dalogue*,

27 U. S. 2 Pet. 1, 18 (7:327, 333); *McDonald v. Hovey*, 110 U. S. 619, 628 (28:269, 271)."

See also the case of *Theodore F. Brown v. John W. Walker, U. S. Marshal*, 161 U. S. 591, 40 Law ed. 819, from the syllabus of which we take the following extract:

"Where one state adopts the laws of another, it is also presumed to adopt the known and settled construction of those laws by the courts of the state from which they are taken."

See also *Hamilton v. Russell*, 1 Cranch 309; *Peacock v. Dodgson*, 2 Pet. 1.

The Supreme Court of the State of Oklahoma, in a long line of decisions, has adopted the foregoing rule and we respectfully direct the Court's attention to a number of these from that state.

From the syllabus of the case of *St. Louis & S. F. R. Co. v. Brewer*, 52 Okla. 349, 152 Pac. 1103, we take the following extract:

"Where a statute is taken from another state which had been previously construed by the highest court of that state, the statute is deemed to have been adopted with the construction so given it."

The Supreme Court of Oklahoma lays down the rule in even stronger language in the case of *Amsden v. Johnson et al.*, 74 Okla. 295, 158 Pac. 1148, from which we quote as follows:

"Where a statute is adopted from another state, the decisions of the supreme court of the state from which adopted, construing such adopted statute, rendered prior to the adoption of such statute by this state, are controlling."

See also:

Council v. Eldridge et al., 71 Okla. 223, 177 Pac. 79.

Green v. Owen et al., 73 Okla. 146, 175 Pac. 345.

Braden v. Gulf Coast Lumber Co., 89 Okla. 215, 215 Pac. 202.

One of the very latest pronouncements on this point by the Supreme Court of the State of Oklahoma is in the case of *Reed et al. v. State ex rel. Roff*, 89 Okla. 165, 230 Pac. 362. The first paragraph of the syllabus of this case is as follows:

"Where a statute taken from another state has at the time of its adoption been construed by the highest court of the state from which it was taken, it is presumed that the legislative body which adopted such statute adopted it as construed by such highest court. *Council v. Eldridge*, 71 Okla. 223, 177 Pac. 79."

We do not deem it necessary to cite other authorities on this point as the decisions, both of the United States Supreme Court and of the Supreme Court of Oklahoma, seem to uniformly uphold our contention as set forth in this proposition.

In the light of these authorities, it would seem that

there can be no question but that when Congress, in its wisdom, extended the laws of Arkansas in force in Indian Territory the constructions previously placed upon those laws by the Supreme Court of Arkansas were likewise adopted and extended in force in said territory; and this being true, there can be no doubt that, under the construction given by said court to Chapter 73 of Mansfield's Digest of the laws of Arkansas, the United States Court for the Southern District of Indian Territory had power to order and confirm the sale of the lands involved herein.

Under the construction given by said court to Chapter 20 and Chapter 49 of Mansfield's Digest of the laws of Arkansas, no curtesy right existed in William M. Patterson; and under the construction given by said court to Chapter 97 of Mansfield's Digest of the laws of Arkansas, the statute of limitations would have barred the right of action of William M. Patterson, if he ever had one, and would have terminated any intervening life estate in him, so that the Oklahoma statute of limitations would have run as against the minor respondents, Doroth A. Patterson and Shelby A. Patterson, who attained full age more than two years before the filing of this suit.

Proposition No. 6.

Adult heirs not condition precedent to right of minors to sell.

There was originally another Federal question raised by the respondents in their petition.

In their pleadings and in the trial of this case in the lower court respondents seemed to place their main dependence upon the proposition that there being no adult heirs of Emma Patterson at the time of the sale of these lands, said lands of said minors could not be legally sold. In other words, they took the position that under the provisions of Section 22 of the Act of Congress of April 26, 1906 (34 Stat. 137), it was necessary that there be adult heirs with whom the minor might join in the sale of their property before the minors' land could be sold.

Before the case came on for trial, however, this matter had been decided against them, and this issue was apparently abandoned by them on their appeal, and was neither urged by them nor considered by the Supreme Court in arriving at its opinion herein.

This issue was decided in the case of *Bartsch et al. v. Wolf et al.* 82 Okla. 27, 198 Pac. 306, where it is very ably discussed, and where the court holds that the existence of adult heirs is not a condition precedent to the right of minors to sell, but that a guardian of minor

heirs had the undoubted right to sell their lands through the probate courts of Indian Territory, under and in accordance with the provisions of the laws of the State of Arkansas in force in Indian Territory, irrespective of whether or not there were adult heirs.

As stated above, we are not briefing this proposition further, because it was abandoned by the respondents on their appeal to the Supreme Court of Oklahoma, and was not urged therein.

On this point, the Supreme Court of Oklahoma, in the case of *Allison* v. *Bryan*, 26 Okla. 520, 109 Pac. 934, lays down the rule as follows:

> "It is essential that all points upon which counsel rely for a reversal of a cause be made in the brief and properly made; if not so made they are waived, and it is not enough to assert in general terms that a ruling of the trial court is wrong; a fair effort must be made to prove that it is wrong or the point will not be considered as having been made."

See also *Federal Discount Company* v. *Galt*, 42 Okla. 620, 142 Pac. 300, and *Bryeman* v. *Chaney*, 27 Okla. 510, 112 Pac. 980.

CONCLUSION.

Your petitioner, by his pleading in the trial court, raises the question of equitable estoppel as against the respondent, William M. Patterson, on the ground that

he held out to your petitioner his minor children as the owners of the lands involved herein, and that he never claimed or asserted any right, title or interest therein in his own right. This is shown by his sworn petition seeking his appointment as guardian, by his petition for authority to sell the lands involved herein, and by his report of sale. He sold said lands to your petitioner as the lands of said minors, and we think that he is estopped to assert title in himself, and the trial court so found.

The Supreme Court of Oklahoma, by its opinion, did not decide this issue further than in a general way in reversing the cause as a whole.

By his pleadings in the lower court, your petitioner also plead as a defense that this action was in the nature of a collateral attack on the judgment of courts of general jurisdiction, and for that reason could not be maintained. The trial court so found, but on appeal the Supreme Court of Oklahoma did not specifically decide the issue, nor discuss it in its opinion, but based its decision on clear cut Federal questions.

Inasmuch as we do not believe either of the two last mentioned propositions to be Federal questions, we will not incumber this brief with a citation of authorities thereunder, though we believe that they are both well taken.

In conclusion, we respectfully submit that in the light of the authorities submitted by us in this brief, the writ of certorari herein prayed should be granted, and that upon the final hearing hereof this Court should reverse the judgment of the Supreme Court of the State of Oklahoma in favor of the respondents, and enter judgment herein for your petitioner.

WM. G. DAVISSON,
Solicitor for Petitioner.

IN THE SUPREME COURT OF THE UNITED STATES.

CASE NO. .....

U. Sherman Joines, Petitioner, vs. William M. Patterson, Doroth A. McFarland, *nee* Patterson, Shelby A. Petterson, and Howell M. Patterson, J. Allen Patterson, and Ruby E. Patterson, Minors, by Their Next Friend William M. Patterson, Respondents.

ACKNOWLEDGMENT OF SERVICE OF PETITION AND BRIEF IN SUPPORT THEREOF.

We, the undersigned, attorneys of record for the respondents, and each of them, do hereby acknowledge service of a copy of the attached and foregoing petition and brief in support thereof, in the above styled and numbered cause, on this the.... day of February, 1926.

HATCHETT & SEMPLE,
HAYES & McINTOSH,
Attorneys for Respondents.

IN THE SUPREME COURT OF THE UNITED STATES.

CASE NO. .....

U. Sherman Joines, Petitioner, vs. William M. Patterson, Doroth A. McFarland, *nee* Patterson, Shelby A. Patterson, and Howell M. Patterson, J. Allen Patterson and Ruby E. Patterson, Minors, by Their Next Friend, William M. Patterson, Respondents.

NOTICE.

To Hatchett & Semple and Hayes & McIntosh, Counsel for Respondents.

Please take notice that on Monday, the ..... day of March, 1926, upon the opening of the court, or as soon thereafter as counsel can be heard, the foregoing petition and brief, together with a certified copy of the entire transcript of the record of the case, will be presented and submitted to the Supreme Court of the United States, in its court room in the Capitol at Washington, D. C., in pursuance of its rules, in such cases made and provided.

Dated this ..... day of February, 1926.

WM. G. DAVIDSON,
Counsel for Petitioner.

We, the undersigned, being all the attorneys for respondents, do hereby acknowledge that a copy of the above and foregoing notice of presentation to the Supreme Court of the United States was served on us on this the ____day of February, 1926.

HATCHETT & SEMPLE,
HAYES & McINTOSH,
Counsel for Respondents.

No. [redacted] 29 8.

Supreme Court of the United States

October Term, 1929

D. SHERMAN JONES, PETITIONER,

vs.

WILLIAM M. PATTERSON, DOROTH A. McFARLAND, nee PATTERSON, SHELBY A. PATTERSON ET AL., ETC., RESPONDENTS.

ON WRIT OF CERTIORARI TO THE [redacted] COURT OF THE STATE OF [redacted].

BRIEF AND ARGUMENT ON BEHALF OF PETITIONER ON QUESTIONS OF FEDERAL QUESTIONS INVOLVED.

[redacted] for Petitioner.

Supreme Court of the United States

October Term, 1925

NUMBER 981

U. SHERMAN JOINES, PETITIONER,

vs.

WILLIAM M. PATTERSON, DOROTH A. McFARLAND, *nee* PATTERSON, SHELBY A. PATTERSON ET AL., ETC., RESPONDENTS.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA.

BRIEF AND ARGUMENT ON BEHALF OF PETITIONER ON MERITS OF FEDERAL QUESTIONS INVOLVED.

STATEMENT OF CASE.

For his statement of the issues in this cause, and his brief in support thereof, petitioner respectfully refers the court to the brief of petitioner, filed herein on the 16th day of February, 1926, in support of petition for Writ of Certiorari, and hereby specifically adopts

the statement of facts and the arguments and authorities therein set forth.

For the reasons set out in his brief aforesaid, your petitioner respectfully submits that the judgment of the Supreme Court of the State of Oklahoma in favor of the respondents should be reversed, and that judgment herein should be rendered in favor of your petitioner.

Counsel for Petitioner.

FILED

MAY 10 1937

CASE NO. [illegible]

IN THE SUPREME COURT OF THE UNITED STATES

U. SHERMAN JONES, PETITIONER,

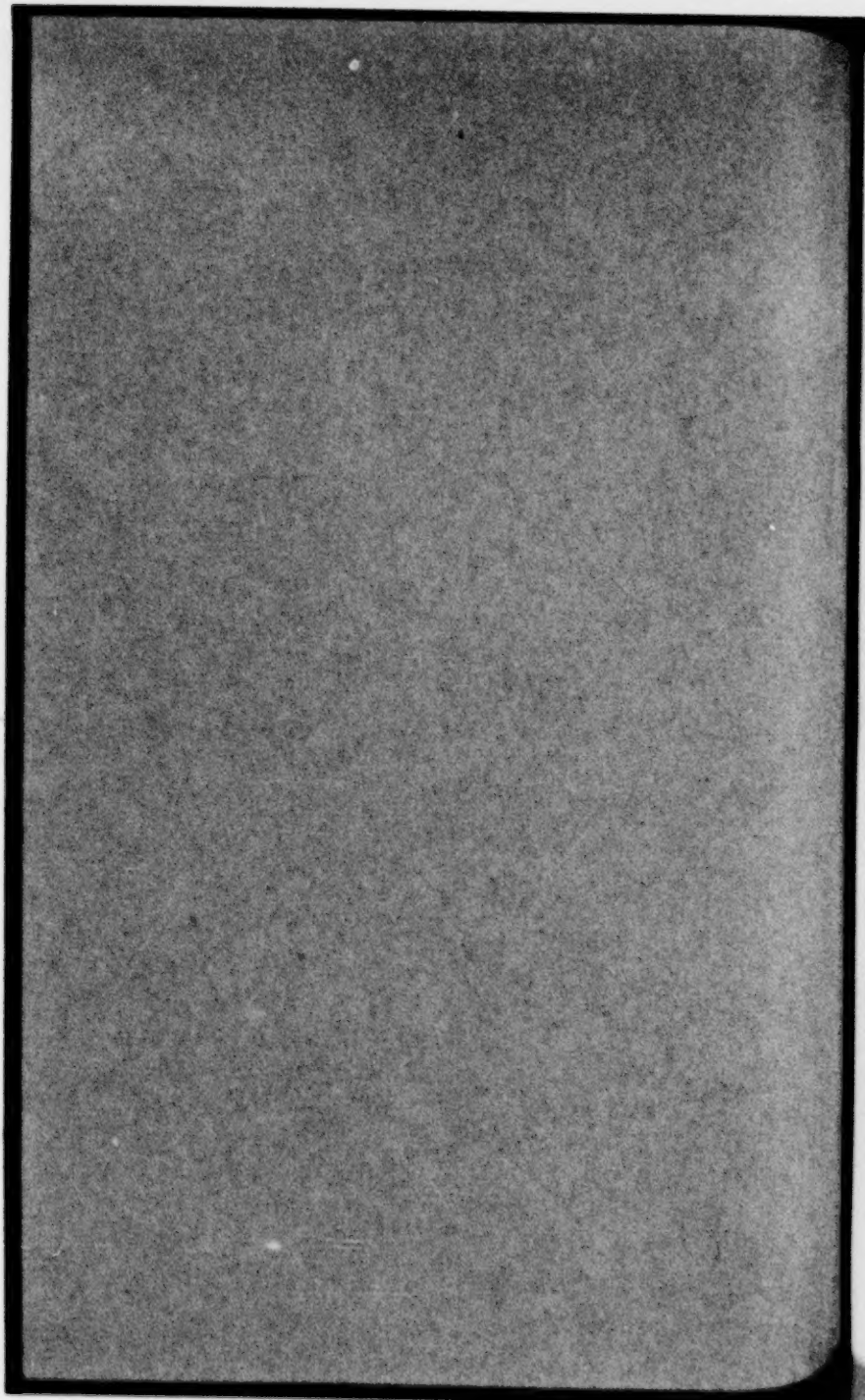
vs.

WILLIAM M. PATTERSON, DOROTHY A. McFARLAND, NEE PATTERSON, SHIRLEY A. PATTERSON, HOWELL M. PATTERSON, J. ALLEN PATTERSON, AND RUBY E. PATTERSON, MINORS, BY THEIR NEXT FRIEND, WILLIAM M. PATTERSON, RESPONDENTS.

PETITIONER'S REPLY TO ANSWER BRIEF OF RESPONDENTS

Wm. G. Davidson,
Attorney for Petitioner.

Oklahoma Pub. Co.—Oklahoma, Oklahoma



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IN THE SUPREME COURT OF THE UNITED STATES

U. SHERMAN JOINES, PETITIONER,

vs.

WILLIAM M. PATTERSON, DOROTHY A. McFARLAND, NEE PATTERSON, SHELBY A. PATTERSON, HOWELL M. PATTERSON, J. ALLEN PATTERSON, AND RUBY E. PATTERSON, MINORS, BY THEIR NEXT FRIEND, WILLIAM M. PATTERSON, RESPONDENTS.

PETITIONER'S REPLY TO ANSWER BRIEF OF RESPONDENTS

PREFACE

After having read the answer brief filed by respondents in the above styled and numbered cause, we desire to preface our reply thereto by the following general statement:

There does not appear anywhere in the respondents' brief nor in the record of this case, one single proposition on behalf of the said respondents which could appeal to the conscience of the Court. A bald and honest statement of the attitude of the respondents in this case is simply this: In 1907, as shown by the agreed state-

ment of facts in this case and exhibits thereto attached (Transcript 66 to 94, inclusive), prior to the admission of Oklahoma as a state of the Union and thirteen years before the filing of the suit in this case, William M. Patterson, the father and the duly appointed guardian of the other respondents in this case acting by and under the authority of the United States Courts of Indian Territory, sold the lands involved in this suit, to your petitioner, U. Sherman Joines.

The lands were appraised as required by the order of the Court, and the full value of said lands was paid by your petitioner, to the said respondents, therefor.

Your petitioner went into possession of the said lands in 1907 and remained in undisputed possession thereof until 1929, before this action was brought. There is not one single allegation of fraud in this whole case. There is no denial of the fact that your petitioner did purchase the said lands in good faith and for a fair consideration, and it is admitted that he paid the agreed consideration for the same.

William M. Patterson made no claim to any right, title or interest in or to said property at the time of the sale thereof to your petitioner, but represented to him, and in all of the court proceedings which appear in this record, that the property belonged to his minor children

for whom he was guardian. Insofar as William M. Patterson himself is concerned, he now comes into court, after thirteen years, and says, in effect: "Notwithstanding the fact that I sold this property to you as the property of my minor children and received the full value therefor, yet I deluded and deceived you, and, as a matter of fact I had at that time an outstanding life estate by curtesy in the same lands, and I now demand the possession during my life time of these lands which I sold to you."

The other respondents in this case, aside from William M. Patterson, do not come into court with any more justice or with any cleaner hands, than does the said William M. Patterson himself. They, too, admit that these lands were sold by their guardian in good faith, to the petitioner, U. Sherman Joines; that they received the full consideration therefor; but they now seek to recover back the lands in fee simple on certain legal technicalities, the sole basis for their claim growing out of the confusion incident to the change from the territorial form of government to the state form of government, and the admission of Oklahoma into the Union.

While seeking to recover this land from your petitioner, not one of the respondents in this case tenders or even suggests the repayment to your petitioner of the purchase price of these lands.

We mention this only to show that there is not one single element of right or justice in the claims of these respondents, as set forth in their own answer brief.

In defense of the claim of *William M. Patterson to a curtesy right*, an examination of the record in this case, and of the brief heretofore filed by us, will show that we have at all times alleged the following defenses:

(a) *That under the facts in this case and the law applicable thereto William M. Patterson did not take a curtesy estate in these lands.*

(b) *That under the agreed statement of facts in this case, if William M. Patterson was entitled to a curtesy estate, that his right thereto is barred by the Arkansas Statute of Limitations.*

(c) *That after having sold said lands to this petitioner, as the property of the other respondents in this case, William M. Patterson is estopped to set up and claim an outstanding life estate in himself.*

As to the other respondents in this case, aside from William M. Patterson, the record in this case will disclose that we have always set up the following contentions:

(a) *That the United States Court for the Southern District of Indian Territory had jurisdiction and power to order and direct the sale of the property involved in this suit.*

(b) *That with the formation of the State of Oklahoma the jurisdiction and power of the United States Court for the Southern District of Indian Territory was, by the procedure outlined in the Enabling Act and*

the Constitution of Oklahoma, transmitted to the County Court of Carter County, Oklahoma, and it inherited the power of the said Federal Court to complete said sale, by entering the order of confirmation.

(c) *That the entire proceeding is a collateral attack on the orders of courts of competent jurisdiction, and for that reason it cannot be maintained.*

(d) *That two of the adult heirs who had attained full age more than two years before the filing of this action, would be barred by the Statute of Limitations from maintaining the action, even though the court proceedings hereinafter referred to had not been sufficient to pass good title to this petitioner.*

With this summary before the Court, we will now briefly reply to some of the separate contentions set up in respondents' answer brief.

RESPONDENTS' FIRST PROPOSITION

Beginning at page 7 of their brief, respondents raise the question that inasmuch as the trial court found that William M. Patterson had an estate by curtesy in the lands in question, but resolved the issues against him on the ground that the Arkansas Statute of Limitations had run against such right, and also on the ground of estoppel, and your petitioner not having filed a cross appeal as to the finding of the trial court, that therefore the question as to whether or not under the facts in this case a curtesy estate actually existed, can-

not be considered by the Supreme Court of the United States on appeal.

We do not believe this contention to be well founded for a number of reasons, to which we direct the Court's attention.

Your petitioner having won the case in the lower court, had no occasion to appeal. The appeal to the Supreme Court of Oklahoma was prosecuted by the Pattersons, the respondents in this hearing.

We first direct the Court's attention to the petition in error, appearing at pages 1 and 2 of the Transcript, by reference to which it will be noted that the errors complained of are of such a character as to raise all of the issues that were presented to the lower court.

We next direct the Court's atention to the fact that most of the argument of the respondents in their brief is not applicable for the reason that it deals with cases where there was a *conflict of evidence* in the lower court and it was necessary for the trial court to weight the evidence and arrive at its conclusions of fact. *Such is not true, however, in the case which we are now considering. There was and is no question as to the facts.* The case was submitted to the trial court on an agreed statement of facts (Transcript 66 to 94, inclusive).

Ruling Case Law, Vol. 2, at page 208, lays down this rule:

> "Where there is no conflict in the evidence or the facts as specially found, the conclusion or judgment to be deduced therefrom is purely a question of law, to be finally determined by the reviewing court."

See also:

Jones v. *Glidewell*, 53 Ark. 161; 13 S. W. 723; 7 L. R. A. 831.

Mary J. Nolan, Administrix, v. *New York, New Haven & Hartford Railway Co.*, 70 Conn. 159; 39 Atl. 115; 43rd L. R. A. 305.

People v. *Reed, et al*, 81 Cal. 70; 22 Pac. 474; 15 A. S. R. 22.

Reading Steel Casting Co. v. *United States*, 268 U. S. 186.

Tarbell v. Grand Trunk R. Co., 96 Vt. 170; 118 Atl. 484; 34 A. L. R. 1444.

Wenzell v. *Gregg*, 161 Wis. 413; 154 N. W. 645.

Ruling Case Law, Vol 2, at page 174, also lays down this further rule:

> "While an appellate court will not disturb the findings of fact made by the trial judge, unless they are manifestly against the weight of the testimony, this rule does not apply if he committed error of law in reaching his conclusions of fact, as where he made a mistake as to the onus probandi."

See also:

Lipe v. *Carolina R. Co.*, 123 S. C. 515; 116 S. E. 101; 30 A. L. R. 248.

Nicoletti v. *Los Banos Bank*, 190 Cal. 637; 214 Pac. 51; 27 A. L. R. 1479.

Boardman v. *Lorentzen*, 155 Wis. 566; 145 N. W. 750; 52 L. R. A. (N. S.) 476.

Under the foregoing authorities, we submit that the questions presented to the Supreme Court on the agreed statement of facts in this case, were purely questions of law, and the record shows that the Supreme Court of Oklahoma, without objection of either party, considered the whole case De Novo.

We now wish to direct the Court's attention to this further fact: *Both the parties to the suit and the Supreme Court of Oklahoma assumed that the question of the existence of a curtesy right in William M. Patterson was in issue in the appellate court*, and the case was argued time after time in that court, both in printed briefs and orally, on the assumption that the existence of such a curtesy right was in issue before the appellate court; and nowhere, either in their brief or in their oral arguments, nor at any time, did the respondents object to the consideration of this issue.

As a matter of fact, the issue was raised by William M. Patterson and the other respondents themselves, and

we respectfully submit that this matter having been considered in issue by the parties and by the Court, no party to the suit can at this late date be heard to complain.

Ruling Case Law, Vol 2, at page 184, lays down this rule:

> "After both parties have assumed that there was a certain issue, and the trial and judgment have proceeded on that assumption, neither can question the fact as to such issue on appeal."

See also the case of San Diego Land and Town Company v. Neale, 25 Pac. 977, where the court says:

> "Both parties assumed at the trial that there was an issue as to value, and the case proceeded to trial and judgment upon that assumption, and the defendants cannot now complain."

As we have already said, both of the parties to the present action treated the matter of the existence of a curtesy right in William M. Patterson under the facts in the case, as in issue, and we contend that the respondents cannot now, since the case has reached the Supreme Court of the United States, for the first time raise the contention that this matter is not an issue in the case.

As conclusive proof of our statement that this proposition has at all times been in issue, we here direct the Court's attention to the first opinion written by the

supreme Court of Oklahoma, appearing in the Transcript of the record, at page 105. In the body of this opinion, on pages 115 and 116, the Supreme Court of Oklahoma used this language:

> "In this action, W. M. Patterson, husband of the deceased allottee, claims a curtesy interest of life estate in the lands involved. In answer to Patterson's claim, it is sufficient to say that the allottee did not become seized of the possession, or the right of possession, to the lands in controversy during her life time. In the several states which have given effect to the curtesy right, among the prerequisite conditions to enjoy the right is the requirement that the wife should become seized of the title, or the right of possesion to the particular land during her life time. The allottee did not select her allotment during her life time. She had merely enjoyed the right during her life time to select some particular tract of land from the allotable lands, subject to the conditions and requirements of the allotment acts of Congress. The right of selection grew out of her citizenship status and community rights in the lands of the nation of which she was a member, and could not be more than an intangible or invisible property. Such property right could not be termed more than an incorporeal hereditament or chattel real. Priddy v. Thompson, 204 Fed. 955. The absence of seizin in the wife during her life time prevented the right of curtesy from attaching to the particular real estate in favor of her husband. Longest v. Langford, ...Okla..... ....Pac....."

It will therefore be seen that the Supreme Court of Oklahoma, in writing its first opinion in this case, specifically says that the matter was in issue before it.

We now direct the Court's attention to the fact that the respondents in this case themselves raised the issue again in the Supreme Court of Oklahoma, when they filed their petition for rehearing. This petition appears at page 116 of the record, and from the record at page 124, we take the following language:

> "The court reaches the conclusion that the surviving husband of Emma Patterson took no interest in the lands that were allotted to her after her death and that the said W. M. Patterson has no interest in the subject matter involved in this suit."

The respondents then proceed to submit that this holding was erroneous and they cite authorities in support of their contention, so that they have here again specifically raised the issue of the existence of this right, themselves.

Then, as further evidence of the fact that the Supreme Court of Oklahoma still considered this matter to be in issue, we direct the Court's attention to the final opinion appearing at page 132 of the Transcript. The first paragraph of the syllabus of the opinion there appearing, reads as follows:

> "The surviving husband of a deceased Choctaw Indian woman who was duly enrolled, but died before receiving her allotment, is entitled to curtesy in said lands under the facts stated in the opinion."

Finally, we refer the Court to the petition for rehearing filed by this petitioner in the Supreme Court of Oklahoma, which appears at page 143 of the Transcript, which document again shows that this question was still considered by the parties to be a vital one in the case. In other words, to sum up, the examination of this record will disclose that the question of whether or not William M. Patterson took an estate by curtesy, under the facts in the case, was considered to be in issue at every stage of the suit, that is, in the trial court and in the various hearings in the Supreme Court of the State of Oklahoma; that it is still in issue, and now before this Court. And never before, in any stage of the case or in any proceeding, until the filing of their brief in this Court, have the respondents attempted to take the attitude that this proposition could not be considered on appeal.

The Supreme Court of the State of Oklahoma having considered this matter on appeal and having reached the conclusion as shown by its opinion, that it has considered this issue, and that in arriving at its judgment it has construed the Federal Statutes and the laws of Arkansas having the force of Federal Statutes, we now respectfully direct the Court's attention to the long line of authorities cited by us at pages 50, 51 and 52 of our original brief filed in this Court, which, without excep-

tion, hold *that where the opinion of the state court shows upon its face that a Federal question was considered and passed upon adversely to the appealing party, that this is sufficient to confer jurisdiction upon the United States Supreme Court to pass upon the same issue.*

We therefore conclude that whether or not this particular proposition could have been raised and considered in the Supreme Court of Oklahoma, if William M. Patterson and the other respondents had objected to the consideration thereof when the issue was first presented, that they certainly come too late when they seek to raise the issue for the first time in this Court, after having themselves raised it and argued it throughout all of the past stages of the proceeding in the state courts, both trial and appellate.

RESPONDENTS' SECOND PROPOSITION

We now desire to consider briefly the matters alleged by the respondents in support of their second proposition, that is, in support of their contention that William M. Patterson, under the facts in this case, did take a curtesy estate in the lands of his deceased wife, Emma Patterson, filed by him as her administrator, in her name, after her death.

We first respectfully direct the Court's attention to the long line of authorities cited in our original brief heretofore filed in this cause, appearing at pages 57 to 74 of said brief. And in addition to said authorities, and as showing the nature of the interest of an allottee in tribal property before its actual selection and allotment to the individual, we desire to quote briefly from a number of decisions of this Court.

In the case of J. S. Mullen et al. v. United States, 224 U. S. 448, this Court held that lands allotted under identical facts with those in this case, were wholly unrestricted. It is not contended by the respondents in this case that these lands were restricted, and there is no question of restriction involved, and we merely cite this authority, without quoting.

In the case of Levi B. Gritts et al. v. Walter L. Fisher, 224 U. S. 640, in an opinion by Mr. Justice Van Devanter, the Court, in defining the nature of the interest of a member of the Cherokee tribe of Indians in the tribal property, uses this language:

> "During the last twenty years Congress has enacted a series of laws looking to the allotment and distribution of the lands and funds of the Five Civilized Tribes, of which the Cherokee tribe is one, among their respective members, and to the dissolution of the tribal governments. * * * * * * *Anterior to this legislation the lands and funds be-*

longed to the tribe as a community and not to the members severally or as tenants in common. The right of each individual to participate in the enjoyment of such property depended upon tribal membership, and when that was terminated by death or otherwise the right was at an end. It was not alienable or descendible."

This decision leaves no question as to the nature of the interest of Emma Patterson prior to her death. Under this holding she could not have been actually seized of an estate of inheritance, and not being so seized, her husband could not take a curtesy estate when he afterward selected and filed an allotment long after her death.

See also Alfred F. Goat v. United States, 224 U. S. 458.

We also wish to direct the Court's attention to the case of Wirt Franklin v. C. S. Lynch, 233 U. S. 269. The opinion in this case was written by Mr. Justice Lamar. We quote as follows: .

"The distinction between a member and an allottee is not verbal, but was made in recognition of a definite policy in reference to these lands. The Revised Statutes, Sec. 2118, declare that no conveyance from an Indian tribe shall be of any validity in law or in equity unless authorized by treaty. *As the tribe could not sell, neither could the individual members, for they had neither an undivided interest in the tribal land nor vendible interest in any particular tract.* * * * The act of 1904, re-

> lied on by plaintiff, removed some of the restrictions, and permitted those members of the tribe who were not of Indian blood to sell land after it had been actually allotted in severalty. *But it did not permit even a non-Indian to sell a mere float or expectancy.*"

We hold that the estate of Emma Patterson, or rather the right of Emma Patterson, was nothing more or less than a mere float or expectancy, and that therefore there could be no curtesy right in her husband because the elements of curtesy were not present. That is to say that there was never any actual seizin in her during her life time. Even the respondents, at page 17 of their brief, use this language:

> "It is true that under a strict application of common law rules to the conditions obtaining in the Five Civilized Tribes prior to statehood dower and curtesy would not attach for want of actual seizin or possesion in the lifetime."

This is a practical admission of our contention. The respondents have cited a number of cases by the Supreme Court of Oklahoma dealing with the wife's dower interest in the allotment of her husband, under circumstances similar to the facts in this case. We will not take the time to answer this argument for the reason that, as we have previously pointed out in our original brief, we hold that the same rule is not applicable to a dower interest that is applicable to a curtesy interest.

If Patterson takes a curtesy interest, he takes it by virtue of the provisions of Section 22 of the Choctaw-Chickasaw Supplemental Agreement, 32 Stat. 641, set out in full at page 59 of our original brief. This section says that the lands shall descend according to the provisions of Chapter 49 of Mansfield's Digest of the Laws of Arkansas. As we have previously pointed out, there is not one line about curtesy in that statute; but Section 2522, being the first section of said Chapter 49 of Mansfield's Digest, does say that when a person shall die having title to any real estate of inheritance, it shall descend to his kindred, male and female, subject to the widow's dower. It does not say that it shall descend subject to the husband's curtesy. Therefore, we say that the cases dealing with dower are not in point.

Section 20 of Mansfield's Digest of the Laws of Arkansas, deals with the subject of curtesy. But under Section 22 of the Choctaw-Chickasaw Supplemental Agreement, referred to supra, the descent is not made according to the laws of Arkansas generally, but according to the provisions of a single chapter, that is, Chapter 49 of said laws.

In conclusion of our argument of this proposition, while we understand that the case of Longest v. Langford, No. 11560, decided by the Supreme Court of Oklahoma July 24th, 1923, is either pending on rehearing or

on appeal to this Court, inasmuch as the Supreme Court of Oklahoma in its first opinion in the case now under consideration, at page 116 of the Transcript, specifically refers to this case, we think it well to quote from the original opinion of the Supreme Court of Oklahoma in that case, which opinion was written by the present Chief Justice of said court, Mr. Branson. We take the following extracts from the opinion in that case:

> "It will be noted that the said Mary E. Puckett was not the owner of the lands herein sued for at the time of her death, was not in possession of the same, and had no interest therein, and was not seized thereof at any time during her life. * * * * And that the said Mary E. Puckett had no interest therein of any kind or character during her coverture with the said G. N. Puckett and that the only interest that the said Mary E. Puckett had in any of the lands of the said tribes was by reason of her citizenship in the Choctaw Nation.
>
> "The essentials of an estate by the curtesy are (1) that the wife be seized of an estate of inheritance to which issue of the marriage may possibly succeed as heir to the wife; (2) that seizin in deed (less properly styled actual seizin) be obtained during coverture; (3) that issue be born alive; (4) the death of the spouse. The transpiring of these events constitute the contingency upon which an estate by the curtesy vests in the husband.
>
> "At common law, An estate by curtesy may exist in an estate of inheritance, and in no other estate." Where an enrolled citizen of the Choctaw Nation dies before any selection of an allotment

has been made for her, no estate of inheritance or other estate in the lands subsequently allotted ever vested in the allottee, and no estate by curtesy would arise in favor of the husband on the selection of an allotment in the name of the deceased wife.

"Record examined, and held, that G. N. Puckett, husband of Mary E. Puckett, an enrolled citizen of the Choctaw Nation, deceased, acquired no estate by curtesy in the land involved in this suit, and that his conveyance to the plaintiff, W. C. Langford, conveyed no interest therein, and that the judgment of the district court for possession of the premises sued for in favor of Lanford, based upon said conveyance, was erroneous, and it is reversed."

It will be seen from the reading of these extracts that there is an absolute conflict of opinion among the members of the Supreme Court of Oklahoma as to whether or not a curtesy interest does exist under the agreed facts in this case.

In the light of the long line of authorities which we have submitted, we respectfully submit that Patterson did not take a curtesy estate in the lands involved.

RESPONDENTS' THIRD PROPOSITION

The third proposition argued by the respondent appears at page 19 of their brief. It is listed there as proposition No. 2 though it is really their third proposition.

Under this proposition, they insist that the Arkansas Statute of Limitation did not operate to bar the curtesy estate of William M. Patterson in the lands of his wife, if in fact he took such an estate. In answer thereto, we respectfully direct the Court's attention to the long line of authorities cited by us in our original brief filed in this cause appearing at pages 74 to 86 inclusive of said brief.

We do not believe that the authorities cited by the respondents under this heading are in point or that they are an answer to the many cases cited by us in our original brief. We do think it necessary, however, to note briefly what we regard as a somewhat misleading statement appearing at page 21 of the brief. The respondents there say that while U. S. Joines may have gone into possession of the lands prior to November 16, 1907, he did not assert title therto except in pursuance of a guardianship sale. We respectfully submit that under the Arkansas Statute as construed by the Supreme Court of Arkansas many times before its extension in force in Indian Territory it does not make any difference under what kind of title Joines claimed, the mere fact that he was in open, adverse possession, claiming at all was sufficient.

Even the Supreme Court of Oklahoma itself has held many times in authorities which we have already cited

in our former brief that where the Arkansas Statute has once started to run that it was that Statute which continued to operate even after Statehood. That Court did not attempt to hold that this Federal Statute did not operate to bar the action if it ran at all but it did hold that the reason why it did not bar this particular action was because the deed under which Joines claimed was a void deed. We need not cite further authorities than those already cited in our original brief in answer to this holding. Indeed the numerous holdings of the Oklahoma Court itself which we have cited in our former brief are sufficient answer to this holding. What we particularly desire to call the Court's attention to here is the fact that the respondents say that your petitioner may have been in possession of the land prior to November 16, 1907. We say that there can be no question as to whether or not he was in possession of these lands prior to that date. The respondents' original petition appears in the Transcript at pages 5 to 7 inclusive. Paragraph 2 of their petition reads as follows:

> "That said defendant is in the possession of and has under his control the possession of said lands and premises hereinabove described, and has had the possession of said lands and premises at all times since the 5th day of July, 1907, and that said plaintiffs have been unlawfully denied the possession, the use and occupancy of said lands and premises since July 5th, 1907."

It will be noted that they specifically allege in their petition that said land has been in the possession and under the control of your petitioner at all times since the 5th day of July, 1907, and in paragraph 4 of their petition they seek to recover the rent value of said land during all of that period of time because of the unlawful with-holding of possession of said lands by your petitioner. This claim for rents, however, was abandoned by them and was not involved in the case.

We further direct the Court's attention to the agreed statement of facts appearnig in the Transcript at pages 66 to 94 and particularly to paragraph 12 of said agreed statement of facts appearing at pages 69 and 70 of the Transcript which paragraph reads as follows:

> "That the said U. S. Joines took possession of said lands and premises above described and has been in the peaceful possession of same from on or about the 5th day of October, 1907, until the present time, and is now in the possession of said lands."

It will be noted by reference to the foregoing paragraph that it is stipulated by all of the parties to the suit that your petitioner, U. S. Joines, has been in open possession of said lands at all times since the 5th day of October, 1907, and that he still is in possession of said lands. This eliminates any question of doubt as to

when he went into possession or how long he has been there.

In the argument of our 5th proposition in our original brief at pages 138 to 142 inclusive, we have pointed out a long line of decisions both by the Supreme Court of Oklahoma and by the Supreme Court of the United States holding that where the laws of one State are adopted and extended in force in another State that the construction placed upon that law by the highest court of the State from which the Statute is adopted is taken and adopted along with the Statute itself.

We have also pointed out in that brief the fact that this Arkansas Statute of Limitations was many times construed by the highest court of Arkansas before its adoption and that open, adverse possession under said Statute is alone sufficient to create title in him who holds possession. We have also cited in our former brief a line of Oklahoma authorities, all of which hold that where the Arkansas Statute started to run prior to Statehood that it continued to run until it barred the action and we have now here pointed out to the Court the paragraphs of the respondents on petitions filed in the lower court and the paragraph of the agreed statement of facts upon which the case was tried which show that your petitioner went into possession of said lands

not later than October 5, 1907, and has been in possession ever since.

The action was filed in 1920. He had been in open, undisputed possession for thirteen years, nearly twice the period of the Arkansas seven-year Statute. The Court will take judicial notice of the fact that Oklahoma became a State on November 16, 1907, and there can then be no question of doubt but that the Arkansas Statute was running when the State was admitted.

Ruling Case Law, Volume 17, page 748, Section 116, lays down the following rule as to when the Statute of Limitation begins to run. It uses this language:

> "The general rule is that the Statute of Limitations begins to run as soon as the right of action has accrued and not until then * * * * * It may be stated as a second general proposition that a cause of action accrues the moment the right to commence the action comes into existence and, conversely, the right to commence the action arises the moment the cause of action accrues. Whenever it is in the power of a person to enforce his demands, his cause of action has accrued * * * * * * The test in each case is in the absence of some Statute to the contrary, whether the party asserting the claim is entitled to maintain an action to enforce it."

Under the foregoing rule, we assert that when Joines went into possession of this land in either July or October, 1907, William M. Patterson's right of action, if he had one, accrued. He did not bring it until thir-

teen years later. We have here no question of a State by legislation attempting to change the applicable Statute because the Oklahoma Supreme Court, in the several decisions which we have cited, has already held that the Arkansas Statute is the one which would operate if it ever started to run. The question which is presented to the Court at this time is that of construing a Federal Statute which was in force in Indian Territory and of determining when under the agreed statement of facts that Statute started to run and whether or not, under the agreed facts, that Statute now operates as a bar to William M. Patterson's right of action. In other words, our rights here are based wholly on the question of the construction of a Federal Statute in Indian Territory. That is, insofar as the question of limitation is concerned.

It seems to us that nothing remains to be said on this proposition. If Patterson ever took an estate by curtesy, it is barred by the Arkansas Statute of Limitation.

RESPONDENTS' FOURTH PROPOSITION

The fourth proposition argued by the respondents begins at page 23 of their brief and it is there numbered "Proposition Number Three."

This proposition deals with the right of the United States Court for the Southern District of Indian Ter-

ritory to order and conduct the guardianship sale under which your petitioner, U. S. Joines, acquired the lands involved in this suit and with the further question as to what Court inherited the jurisdiction to confirm the sale so ordered and conducted by the said United States Court, such confirmation being had after the admission of the State of Oklahoma into the Union.

We have already discussed this proposition at great length under our Proposition Three and the various sub-divisions thereof, this discussion appearing in our original brief at pages 87 to 129 inclusive, and we here refer to and adopt the arguments there made.

The respondents' argument is somewhat difficult to understand. It seems based on the following general principals, however. First, that the proceeding for the sale of these lands in the United States Court for the Southern District of Indian Territory, prior to Statehood, was only an ancillary proceeding and that the main guardianship proceeding was pending at Durant in the Central District of Indian Territory and that therefore the County Court of Bryan County instead of the County Court of Carter County would inherit the jurisdiction to confirm this sale. They also devote considerable space to the argument of this proposition on the theory that we claim a vested right in a matter of

procedure and that there can be no vested right in procedure.

We here take the liberty of again directing the Court's attention to the Arkansas Statute under which this sale was had, which is set out in full in our original brief. We also direct the Court's attention to the construction of that Statute by the Supreme Court of Arkansas in the case of Reid et al v. Hart, which case has been cited and from which we have quoted at length in our original breif.

We also direct the Court's attention to the Federal Statutes there cited extending said Arkansas laws in force in Indian Territory. Reference to these citations disclose that the Statute itself confers authority on the Probate Court of the County *in which the lands are situated* alone, to order and direct the sale of guardianship property, this apparently to the exclusion of any jurisdiction in the Probate Court of the County in which the guardian may have been appointed if the lands were located in a different county.

An investigation of the authorities there cited will also disclose that in the case of Reid et al v. Hart, the *Supreme Court of Arkansas held that the Probate Court of the County in which the lands were situated had jurisdiction to order the sale of the lands.* There

is absolutely nothing either in the Statute or in that decision of the Arkansas Court which holds that this is merely an ancillary proceeding. It is a complete proceeding for the sale of the property within itself.

An investigation of the Congressional enactments referred to discloses that in extending these Arkansas laws in force in Indian Territory, Congress provided that the judicial districts of Indian Territory should correspond with the Arkansas County sub-divisions in applying this law . In the case at bar, pursuant to said Congressional enactments and the laws of Arkansas hereinbefore referred to, the guardian went into the United States District Court where *the lands were situated* and there conducted his proceedings for the sale of this property down to the point of the entry of the order of confirmation. Every other requisite of the proceeding had been fully carried out. The consideration had been paid over and the deed had been executed and there was on file in the United States Court a petition for the confirmation of this sale, but before the Federal Court could enter the order of confirmation, Statehood intervened.

It is agreed in the 10th paragraph of the agreed statement of facts at page 69 that the papers concerning the sale of the lands in question were on file in the United States Court for the Southern District of Indian

Territory and that they were transmitted with the coming of Statehood to the County Court of Carter County, Oklahoma. There is nothing in the record and no contention made any where that they were ever on file in the United States Court for the Central District of Indian Territory, or in the successor of that court, the County Court of Bryan County, Oklahoma.

The respondents in their breif, at pages 24 and 25 admit that the proceedings concerning the sale of this property were on file in the United States Court for the Southern District of Indian Territory and that they were transmitted to the County Court of Carter County. They say in effect:

> "No Probate proceeding was pending in the Southern District at Ardmore other than proceeding in which this guardian had sought to sell lands located within the confines of the Southern District."

Now, we contend that this was not an ancillary proceeding but that a proceeding for the sale of property under the Arkansas Statute was a complete proceeding within itself. Had the United States Court for the Southern District entered its order of confirmation before Oklahoma was admitted into the Union, the proceeding would have been complete and the jurisdiction of that Court would have been exhausted; but it did not do this and, under the procedure pointed out by the en-

abling act and the constitution, the power to confirm this sale was transmitted through the District Court of Carter County to the County Court of Carter County and it inherited the power to complete that sale which had previously been vested in its predecessor, the United States Court for the Southern District of Indian Territory.

When the County Court of Carter County entered its order confirming this sale, it exhausted its jurisdiction and we are not confronted with the proposition of two Probate Courts in Indian Territory having an equal general jurisdiction over the entire Patterson guardianship proceeding. We simply have a situation where, under the arbitrary procedure established to transfer pending causes from the Territorial Courts to the State Courts, the branch of this proceeding which was pending in the Territorial Court of the Southern District was transferred to the County Court of Carter County with jurisdiction to complete the work of its predecessor while the proceedings having to do solely with the appointment of the gardian which were on file in the Central District of Indian Territory were by the same procedure arbitrarily transferred to the County Court of Bryan County.

We have already cited and quoted at length in our original brief most of the applicable statutes and de-

cisions but we desire here to refer to a few other statutory provisions which will throw light on this subject.

The first section of the Enabling Act under which Oklahoma was admitted into the Union (34th Statute, 267) says:

> "The inhabitants of all of that part of the area of the United States now constituting the territory of Oklahoma and the Indian Territory as at present described, may adopt a constitution and become the State of Oklahoma *as hereinafter provided.*"

The Enabling Act then goes on and lays down the terms and conditions on which the State may come into the Union. Among the other provisions of the Enabling Act are Sections 19 and 20, the applicable portions of which we have already copied in full in our original brief.

Section 22 of said Enabling Act reads as follows:

> "That the constitutional convention provided for herein shall by ordinance irrevocably accept the terms and conditions of this act."

By Section 28 of the Schedule to the Constitution of Oklahoma, the aforesaid provisions of the Enabling Act with reference to the transfer of pending causes were specifically accepted.

We now take the liberty of quoting at length Section

27 of the Schedule to the Constitution of Oklahoma. This section reads as follows:

> "All cases, civil and criminal, pending, at the time of the admission of the State into the Union, in the District Courts of the Territory of Oklahoma, in any county within the district, and the records, papers, and proceedings of said District Court, and the seal and other property appertaining thereto, shall be transferred into the District Court of the State for such county, except as is provided in the Enabling Act of Congress, and all cases, civil and criminal, pending, at the time of the admission of the State into the Union, in the United States Court for the Indian Territory, within the limits of any county, created in whole or in part within the limits of what was heretofore the Indian Territory, and all records, papers, and proceedings of said United States Courts for the Indian Territory, and the seal and other property appertaining thereto, shall be transferred to the district Court of the State for such county, except as is provided in the Enabling Act of Congress and the amendments thereto: Provided, That the Legislature may provide for the transfer of any such cases from one county to another county. (Bunn's Ed. Sec. 476.)

We have already quoted at length in our original brief Section 23 of the Schedule to the Constitution and also Section One and the Preamble to the Constitution and to these quotations we again refer.

The provisions of the Enabling Act and the Sections of the Schedule to the Constitution which we have here pointed out provide the complete procedure for the

transfer of causes pending in the Territorial Courts at the time of the admission of Oklahoma as a State on November 16, 1907, and we respectfully submit that there was absolutely no option in either the State or Federal Court as to where and how these pending causes should be transferred.

We have cited in our original brief authorities from the Supreme Court of Oklahoma holding that the procedure was arbitrary and that it left no discretion whatever in the Courts but merely made of them the instrumentalities to transmit the jurisdiction in the manner and to the places provide by said acts.

The constitution and the Enabling Act must be construed together as the one is the acceptance of the terms of the other and the two together establish the complete procedure.

There is no occasion for us to answer the portion of the brief of the respondents which charges that we are claiming a vested right in procedure for the reason that there was no change in the procedure here established. Sections 23 and 27 quoted supra contain the provisions that the legislature may provide for the transfer of any such cases from one County to another County. This is only a recognition of the fact that under this procedure, arbitrarily established by the constitution and the

Enabling Act, causes would be transferred to Counties which did not have jurisdiction if the proceeding were a new proceeding brought after Statehood and, as we have already pointed out in our original brief at pages 111 to 114 inclusive, the Legislature of Oklahoma in 1908 (Session Laws 1908, page 212) did enact a law which provided in effect that where by the procedure established by the constitution and the Enabling Act, a cause was transferred to a County which would not have had jurisdiction had the proceeding been instituted after Statehood that such pending proceeding might *on application of some interested party* be transferred to the Court which would have had jurisdiction had the proceeding been brought after Statehood, but as we have already pointed out in the aforesaid pages of our original brief, the Supreme Court of Oklahoma in the case of Eaves v. Mullen there cited, has held that that act was not self-executing; that it did not provide for the transfer of such causes *except where some interested party made application for such transfer.*

No such application was made in this proceeding for the sale of the lands involved in this case. It is true that because of the confusion incident to the creation of a new State and the transfer of thousands of pending causes, that this particular sale was not confirmed for some four or five years after the transfer of the

records in the case from the United States Court for the Southern District of Indian Territory to the County Court of Carter County, but no interested party had in the interim applied for a transfer of this cause to Bryan County or any other County and therefore the inherited jurisdiction which the County Court of Carter County inherited from the United States Court for the Southern District of Indian Territory to complete this pending proceeding by the entry of the order of confirmation, remained in that Court and was exercised by it when it entered its order of confirmation on the 5th day of August, 1913.

Among other things, the County Court of Carter County at the time of entering the order of confirmation and as a part of said order, finds that all of the proceedings for the sale of the property were duly, legally and regularly had and conducted and it further finds in said order at page 91 of the Transcript that the County Court of Carter County, State of Oklahoma, is the successor of the United States Court for the Southern District of the Indian Territory, sitting at Ardmore, and as such, is authorized to do any and all things herein which the said United States Court for the Southern District of the Indian Territory, sitting at Ardmore, could have done, and that its order of confirmation is entered pursuant to such inherited jurisdic-

tion. The exact language of the Court in this behalf is as follows:

> "And, whereas, the County Court of Carter County, State of Oklahoma, being the successors of the United States Court for the Southern District of the Indian Territory, sitting at Ardmore, and being authorized to do any and all things herein which the said United States Court for the Southern District of the Indian Territory sitting at Ardmore could have done, did on the 14th day of July, 1913, make an order confirming said sale."

The rights of your petitioner here depend absolutely on the construction of Federal Statutes and the rights claimed under Federal Statutes. The questions to be answered are these:

"Under the Federal Statutes cited and the laws of Arkansas extended in force in Indian Territory and having the force of Federal Statutes, did the United States Court for the Southern District of Indian Territory have power to order this sale? Secondly, under the procedure established by the provisions of the Enabling Act, and the Constitution accepting the Enabling Act, did the County Court of Carter County inherit the jurisdiction of the United States Court for the Southern District of Indian Territory to confirm the sale?"

We think that both of these questions must be answered in the affirmative and that the title of U. S. Joines, your petitioner, must be upheld.

RESPONDENTS' FIFTH PROPOSITION

The fifth proposition argued by the respondents, appears at page 30 of their brief, under the caption, "Validity of Sale Without Confirmation."

We have always felt that one of the outstanding errors committed by the Supreme Court of Oklahoma, was in holding that this sale made under the Arkansas Statute in force in Indian Territory having the force of a Congressional enactment, must have been confirmed within one year from the date of the sale. It appears to us that the reasoning of the Oklahoma Supreme Court here is absolutely without foundation. It holds, in effect, that this sale had under this Arkansas Statute, must have been confirmed within a year from the date of said order of sale, because there is an Oklahoma statutory provision which was enacted in 1908 which says that no order of sale shall continue in effect for more than one year *without a sale being had thereunder.*

This Oklahoma Statute has absolutely nothing to do with the matter, for a number of reasons. In the first place, as we have pointed out in our original brief, beginning at page 122, the holding of the Oklahoma Supreme Court is erroneous for the reason that the *sale was not had under said Oklahoma Statute.*

In the second place, it is erroneous because the exhibits attached and made part of the agreed statement of facts, conclusively *show that the sale was had within a year from the date of the order of sale.*

In the third place, even if the Oklahoma Statute applied, which it does not, said act does not require that the sale be confirmed within a year. *It merely requires that a sale be had within a year*, and there is no fixed time even under the Oklahoma law within which it must be confirmed. So that, for these three reasons, the judgment of the Supreme Court of Oklahoma is undoubtedly erroneous.

Furthermore, as will be seen by reference to our original brief, we have cited a long line of authorities at pages 125 to 129, all of which hold that the *sale does not take the date of confirmation*, but that the *order of confirmation when entered relates back and the sale becomes effective and binding and passes title as of the actual date of the sale itself.*

In addition to what we have there said, we desire to quote from the case of Brasch v. Munsey, 99 Ark. 324, 138 S. W. 458, for the reason that this is an opinion of the Arkansas Supreme Court and sets forth the holdings of that court on the subject of the confirmation of

judicial sales. We take the following extract from the opinion in that case:

> "The effect of the confirmation of a judicial sale is, however, primarily to determine that such sale has been made in due compliance with the provisions of the decree; and where such sale is made fairly and honestly, and in due compliance with the provisions of the decree, the purchaser has a right to insist upon its due confirmation. When a confirmation of sale is made, all objections thereto are concluded, and the bargain becomes complete *and the rights springing therefrom relate back to the date of the sale which was made by the commissioner. After the commissioner's sale is confirmed, the rights of the purchaser relates back to the date of the sale made by him and the purchaser is then considered the owner from and after that date.* Rorer on Judicial Sales, Sec. 122; 17 Am. & Eng. Enc. Law, 993; Green v. Robertson, 80 Ark. 1, 96 S. W. 138; Haralson v. George, 56 Ala. 295; Cale v. Shaw, 33 W. Va. 299, 10 S. E. 637. *It follows from this, therefore, that after a judicial sale has been duly confirmed it dates, not from the confirmation thereof, but from the time of the sale made by the commissioner under the order of the court.*"

The question of confirmation of this sale presents a clear cut Federal question. It involves the construction of a Federal Statute in force in Indian Territory prior to Statehood. A sale had been had under that particular statute. Everything had been done except the entry of the order of confirmation. By virtue of the fact that the petitioner in this case had bid in the property, had paid over the consideration; that the consideration had

been accepted by the Pattersons and that they had filed their petition in the Federal Court asking for the confirmation of this sale, vested rights had been acquired by your petitioner, that is, he had a right to have the sale confirmed, and Congress guaranteed him that right when it passed the Enabling Act and compelled the new state by its constitutional provisions to continue this pending proceeding to conclusion, *as though no change in government had taken place.*

We respectfully submit, therefore, that when the County Court of Carter County, Oklahoma, entered its order confirming this sale on the 14th day of July, 1913, that the order related back and made the sale effective and caused the title to pass as of the actual date of the sale itself, which, as shown by the report of sale made by William M. Patterson, and appearing at page 78 of the Transcript, was on the 5th day of July, 1907.

RESPONDENTS' SIXTH PROPOSITION

This proposition appears at page 33 of the respondents' brief, under the caption, "Plaintiff in Error's Proposition No. 4." It is, in effect, that the statute of limitations did not run as against Dorothy McFarland nee Patterson and Shelby A. Patterson, two of the respondents who became of age more than two years prior

to the filing of this action, and the only ground urged is that there was an outstanding life estate in their father, William M. Patterson, which prevented the running of this statute. That was in effect what the Supreme Court of Oklahoma held.

We have already argued this phase of the case under Proposition Number Four in our original brief, and have there referred to the authorities cited by us in other portions of the brief, first, to show that Patterson never took an estate by curtesy, and secondly, that if he did take an estate by curtesy, the Arkansas Statute of Limitations created title in the petitioner, which had the effect of completely destroying and wiping out any life estate of the said William M. Patterson; and that therefore these two adult respondents, if they had any right of action, would be barred from asserting it by reason of their failure to file their action within the two years next after attaining majority.

COLLATERAL ATTACK

In conclusion of our original brief, at page 145, we pointed out the fact that we had raised the issue that this whole proceeding on the part of the respondents is a collateral attack on the orders and judgments of courts of competent jurisdiction, and for that reason the action could not be maintained.

We direct the Court's attention to next to the last paragraph of your petitioner's answer, appearing at page 42 of the Transcript, where this issue is raised.

In the case of Steel v. Kelley, 32 Okla. 547, 122 Pac. 934, the Supreme Court of Oklahoma uses this language:

> "The United States Courts in the Indian Territory were courts of superior jurisdiction; all presumptions were in favor of their action; and all irregularities in the exercise of their jurisdiction in probate proceedings, rightfully acquired, were cured by final judgments, and not open to collateral attack."

In the case of Vinson v. Cook, 76 Okla. 46, 184 Pac. 97, the Supreme Court of Oklahoma uses this language:

> "The County Courts of this state are courts of record and have general jurisdiction in probate matters. The orders and judgments of such courts, when acting within their jurisdiction, are entitled to the same favorable presumption and to the same immunity from collateral attack as are accorded to those of other courts of general jurisdiction."

See also Welch v. Focht, 171 Pac. 739.

In the case of Southwestern Insurance Company v. Taylor, et al, 173 Pac. 831, the Supreme Court of Oklahoma holds as follows:

> "An order of the County Court transferring a guardianship cause to the County Court of another county in this state cannot be collaterally attacked, and it is to be presumed that the court be-

> fore making the order of transfer performed his duty and found the facts to justify the order to be true."

Ruling Case Law, Vol. 16 at page 83, lays down the rule that an order of a probate court confirming a sale, is a final judgment.

In the case of Welch v. Focht, quoted supra, the Supreme Court of Oklahoma says:

> "In a collateral attack on a guardian's deed and the sale proceedings of a County Court, the scope of inquiry is confined to the question as to whether the County Court had jurisdiction of such proceedings."

Without citing further authorities, we respectfully submit that unless this court shall find that the United States Court for the Southern District of Indian Territory was absolutely without jurisdiction to order the sale of the lands in this case, and unless it shall find that the County Court of Carter County, Oklahoma, was absolutely without jurisdiction to confirm the said sale, that then the whole proceeding is a collateral attack on the orders of the United States Court for the Southern District of Indian Territory, and the Probate Court of Carter County, Oklahoma, and that for this further reason, it must fail.

ESTOPPEL

The first paragraph of the Syllabus of the case of Atlantic Coast Line Railway Company, Appt. v. Radaughton, Commissioner, et al, 262 U. S. 415; 67 Ed. 1051, reads as follows:

> "In cases properly before the Supreme Court of the United States on Federal questions, all questions presented by the record, whether involving Federal or state law, must be considered."

If, in line with the rule laid down above, this Court shall hold that in the consideration of the case now at bar it will consider also the question of estoppel on behalf of your petitioner in this cause, we then desire to direct the Court's attention to the following matters which appear in the record:

At page 41 of the record, in defendant's answer, appears the following paragraph:

> "Further answering, and by way of estopped, this defendant specially pleads that the plaintiff, Wm. M. Patterson, held himself out, as guardian, of the two said minor children aforesaid, and represented to this plaintiff that the said children were the sole heirs of the said Emma Patterson, deceased, and had all the right, title and interest in her said lands; and that by reason thereof, he is now estopped from setting upon and claiming any interest in or to the same."

As part of the agreed statement of facts, at page 71

of the record, appears William M. Patterson's petition, as guardian, to sell the lands involved in this suit. We take the following extract from this petition:

> "Petitioner states that said minors are the children of William M. Patterson by his wife, Emma Patterson, born to them in lawful wedlock, and that they are the only children of the said parents, *by the said or any other marriage and that they are the only heirs of the said Emma Patterson, whatsoever.*"

At page 74 of the record, we take the following extract from the recommendation of the United States Court Clerk to the United States District Judge of the Southern District recommending the sale of the property involved in this action:

> "It appearing that within named minors are seized of lands herein in fee simple from their deceased mother, *the father not claiming any right or title thereto,* and that it to the best interest of said minors that said lands be sold to provide for their education and support and to improve their separate estates, so as to make them productive and revenue producing, I respectfully recommend to the court that the petition be granted."

At page 75 of the record, we take the following extract from the Court's order directing the sale of this property:

> "And it appearing to the court that the said William M. Patterson is the legal guardian of said minors; that they are the owners of the lands hereinafter mentioned and set forth, having inherited

the same from their mother, Emma Patterson, deceased."

From pages 80 of the record, we take the following extracts, from the guardian's report of sale:

"The bid so made for same by said U. S. Joines, and so accepted by your petitioner, was, in the opinion of your petitioner, equal to the full value of the interests of said minors in said lands and premises; *That is, to the value of the fee simple title thereof, free and unincumbered in anywise whatever.*

Your petitioner further states that he endeavored in all proper and legitimate ways, to cause the said lands and tenements to sell for the highest price possible; and that he neither omitted, neglected or left undone anythnig he could do to further the interests of his said wards in said sale; *that the lands, having brought their full value, your petitioner suggests that the said sale should be approved and confirmed, and he so asks.*"

We also refer to the two deeds executed by the said William M. Patterson, guardian, in favor of U. S. Joines, appearing at pages 84 and 88 respectively of said record.

In the face of these representations on the part of the said William M. Patterson as to the ownership of the property in question, we respectfully submit that he is estopped to set up and claim any interest in this property as against your petitioner to whom he sold and conveyed the property as the property of his minor

children for whom he was then and there legal guardian.

We do not deem it necessary to cite many authorities in support of this contention but direct the Court's attention to Folk v. United States, 233 Fed. 177, where it is said:

> "In equity, no one may successfully deny to the damage of another the truth of his statements or representations by which he has purposely or carelessly induced another to so change his situation that the assertion of the truth will irreparably or seriously injure him."

See also the case of Revel v. Pruitt, 42 Okla. 696; 142 Pac. 1019, where the Court said:

> "Where a party brings suit as next friend for a minor son for damages for decreased earning power, he is estopped from subsequently recovering such damages for his own use."

Certainly the rule laid down in this last mentioned case would apply with equal force to a guardian who sold property as the property of his wards and later undertook to recover it from his grantee as his own property.

CONCLUSION

In conclusion, therefore, for the reason stated in our original brief and in this reply brief, we respectfully

submit that the judgment of the Supreme Court of the State of Oklahoma rendered in this cause, is erroneous, and that said cause should be reversed and judgment rendered herein for your petitioner.

WM. G. DAVISSON,

Attorney for Petitioner.

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I.

The question of whether or not William M. Patterson obtained an estate by curtesy in the lands of his deceased wife is not open to this court for review because the trial court held that William M. Patterson did obtain such estate and no appeal or cross-appeal was prosecuted by plaintiff in error from such holding, consequently this question was not presented to the Supreme Court of Oklahoma for review and is not now before this court 7

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In the Supreme Court of the United States

OCTOBER TERM, 1926.

U. SHERMAN JOINES, PETITIONER,

VS.

WILLIAM M. PATTERSON, DOROTHY A. McFARLAND, NEE PATTERSON, SHELBY A. PATTERSON, HOWELL M. PATTERSON, J. ALLEN PATTERSON, AND RUBY E. PATTERSON, MINORS, BY THEIR NEXT FRIEND, WILLIAM M. PATTERSON, RESPONDENTS.

STATEMENT OF CASE.

We have no serious objection to the statement of the case as contained in the brief of counsel for petitioner herein, except that we believe that in some instances the statement of the case in behalf of the petitioner is not exactly in line with the agreed state of facts on which the case was tried.

This action was originally instituted in the District Court of Murray County by a petition filed in behalf of W. M. Patterson, surviving husband of Emma Patterson, deceased, and the following children of Emma Patterson, deceased, Dorothy A. McFarland, nee Patterson, Shelby A. Patterson, Howell M. Patterson, J. Allen Pat-

terson, and Ruby E. Patterson. The petition was filed on February 21, 1920, and alleges in substance that the plaintiffs are the sole heirs of the lands of Emma Patterson, deceased, who was a duly enrolled member of the Choctaw Tribe of Indians, enrolled as a Mississippi Choctaw, and alleges the date of the death of Emma Patterson to be at a time when the laws of Arkansas were in force in the Indian Territory (Transcript of Record, pages 4 to 7, inclusive). A general demurrer was filed by U. S. Joines as defendant, and the same was thereafter duly overruled by the trial court (Transcript, page 10). On August 9, 1920, an answer was filed by U. S. Joines, in which the said U. S. Joines deraigned his title to the lands in controversy, setting out that he had acquired title by virtue of a guardianship sale, and attached copies of documents as exhibits to his answer (Transcript, pages 11 to 23, inclusive). A reply was filed by the plaintiffs in the form of a general denial and the case went to trial in the District Court of Murray County, Oklahoma, and the case was tried before the court without a jury on an agreed statement of facts entered into by counsel for the respective parties (Transcript of Record, pages 66 to 70, inclusive). A judgment was rendered by the trial court on May 26, 1921 (Transcript of Record, pages 94-96, inclusive).

The court expressly found that W. M. Patterson acquired a life estate by courtesy in the lands in controversy, but at the same time found that he was barred by the seven year statute of limitations of the laws of Arkansas then in force in the Indian Territory (Transcript, page 94).

From the judgment as rendered the plaintiffs below, W. M. Patterson, *et al.*, prosecuted an appeal to the Supreme Court of Oklahoma, but no cross appeal was prosecuted by the defendant below, U. S. Joines, and the case was submitted to the Supreme Court of Oklahoma on petition in error, with case-made attached, filed by W. M. Patterson, and the other respondents in this court.

As stated by counsel for plaintiff in error, two opinions were rendered by the Supreme Court of Oklahoma, one by Mr. Commissioner Stephenson (Transcript, page 107), and on petition for rehearing having been filed the court granted the rehearing and the last opinion in the case was rendered by Mr. Justice Clark, a member of the supreme court (Transcript, pages 132-142, inclusive).

Propositions number five and six of the plaintiff in error herein were not passed upon or referred to by the Supreme Court of Oklahoma in the opinion to which reference has been made.

In a number of instances counsel for plaintiff in error, in the argument set forth in the brief, refers to matters which he says were agreed upon in the trial below, but we respectfully submit that the agreed statement of facts on which the case was tried and to which reference is herein made definitely sets forth the matters and things which were agreed to and we shall not burden the record with reference to each individual instance wherein we think counsel refers to matters not set forth in the agreed statement of facts.

PROPOSITIONS OF PLAINTIFF IN ERROR.

PROPOSITION No. ONE.

Under the provisions of the Federal Statutes, and of the Laws of Arkansas having the force of Federal Statutes extended in force thereby in Indian Territory, and in force in said territory at the time of the death of Emma Patterson, and necessarily construed by the Supreme Court of Oklahoma in arriving at its opinion herein, William M. Patterson took no estate by courtesy in the lands of his deceased wife, allotted in her name by her administrator after her death, and the opinion of the Supreme Court of Oklahoma holding that he took such estate therein is erroneous.

PROPOSITION No. TWO.

If it be held that under the provisions of the Federal Statutes, and the laws of Arkansas having the force of Federal Statutes in force in Indian Territory at the time of the death of Emma Patterson, her husband, William M. Patterson, did take an estate by courtesy in the lands selected and allotted in her name by her administrator after her death, then his right to assert such estate as against U. Sherman Joines, your petitioner, is barred by the Federal Statutes and laws of Arkansas extended in force in Indian Territory thereby necessarily construed by the Supreme Court of Oklahoma in arriving at its opinion herein, and the opinion of said court holding that such right of action is not barred is erroneous.

PROPOSITION No. THREE.

Under the provisions of the Federal Statutes and the laws of Arkansas as extended in force in Indian Territory, as construed by the highest courts of Arkansas before the extension of said lands to Indian Territory, the United States Court for the Southern District of Indian Territory had jurisdiction to order and confirm the sale by guardian of the lands involved in this action, and under the provisions of the Federal Enabling Act by which Oklahoma was admitted as a state, and the provisions of the Oklahoma Constitution adopted pursuant to said Enabling Act, the jurisdiction to confirm the sale previously ordered and made under the orders of the United States Court for said Southern District was, with the coming of statehood, conferred upon and inherited by the County Court of Carter County, Oklahoma, and the Supreme Court of Oklahoma erred in holding that the sale made under the orders of the said United States Court and confirmed by the order of the County Court of Carter County was void.

PROPOSITION No. FOUR.

The Supreme Court of Oklahoma erred in holding that under the provisions of the Federal statutes in force in Indian Territory prior to statehood, and the laws of Arkansas, extended in force in said territory and having the force of Federal statutes therein, that there was an intervening life estate outstanding in William M. Patterson not terminated by the Arkansas Statute of Limitations, as construed by the highest

court of Arkansas before its adoption, which outstanding life estate would prevent the running of the Oklahoma two-year statute of limitations as against the respondents, Dorothy A. Patterson and Shelby A. Patterson, who attained full age more than two years prior to the filing of this action.

PROPOSITION No. FIVE.

When a statute of one state or nation is adopted by another state or nation, such adoption carries with it, and adopts, the construction given to such statute by the highest court of the state from which it was adopted, if it was construed by such court prior to such adoption.

PROPOSITION No. SIX.

Adult heirs not condition precedent to right of minors to sell.

ARGUMENT AND AUTHORITIES.

We shall discuss the respective contentions advanced by counsel for plaintiff in error in the order in which they are set forth in the brief filed by plaintiff in error, and in connection therewith we shall set forth our authorities and argument in answer to the propositions urged by plaintiff in error.

Plaintiff in Error's Proposition No. 1.

Counsel for plaintiff in error first complains of the opinion of the Supreme Court of Oklahoma in holding that Wm. Patterson succeeded to an estate by curtesy in the lands of his deceased wife. Before proceeding with the argument as to whether or not curtesy would attach where lands are selected after death, we invite the court's attention to the fact, that no exception was taken by counsel for plaintiff in error to the finding of the Trial Court of Murray County sustaining the proposition that William Patterson took an estate by curtesy (page 94, Transcript). No appeal was prosecuted by plaintiff in error from the judgment rendered by the trial court on this question and we insist that plaintiff in error can not be heard to complain of this holding of the supreme court.

In *Maria Eustaquia Ortiz De Rodriguez, by her Husband, Juan Bautista Rodriguez* v. *Jose Antonio Vironi*, reported in 201 U. S., page 371, 50 Law Edition, page 594, this court held that questions not presented by the pleadings nor raised in the lower court will not be considered on appeal.

In the case of *Canal and Claiborne Streets Railroad Company* v. *Hart*, 114 U. S., page 654, 29 Law Edition, page 226, this court in speaking of the failure to raise the objection in the trial court said:

> "This point was not taken in the court below and it does not appear in the motion in arrest of judgment or in the bill of exceptions, or in the **assignment of errors accompanying the writ of error.**"

To the same effect are *Barrow* v. *Reah*, 9 Howard, page 366; *Rogers* v. *Ritter*, 12 Wallace Wall, page 317, 20 Law Edition, page 417.

It is true that the trial court held that the Statute of Limitations had barred any right of action to which William Patterson should have been entitled but we insist that plaintiff in error can not now complain of the holding of the Supreme Court of Oklahoma for the reason that no appeal was prosecuted by him from the judgment of the trial court.

The trial court, as heretofore shown, held that W. M. Patterson acquired a life estate by curtesy in the lands in controversy but at the same time found that he was barred by the seven year Statute of Limitations of the laws of Arkansas then in force in the Indian Territory. There was no cross petition on appeal filed by the defendant in the lower court and for that reason the adjudication of that question was final as against the defendant, plaintiff in error here. The Supreme Court of Oklahoma has held this a number of times and as authority on this proposition we call the court's attention to the case of *Nelson* v. *Reynolds*, 158 Pac., page 391, the syllabus of which reads as follows:

> "Where a defendant in error fails to file a cross petition in error, only those questions presented for assignments in the petition in error are properly reviewable by the supreme court on appeal."

Also the case of *Horn* v. *Bohler*, 178 Pac., page 664, the syllabus of which reads as follows:

> "Where the defendants in error have not filed a cross petition in error, alleged erroneous rulings of the trial court against them will not be considered on appeal."

and our contention is that since this question could not be considered by the Supreme Court of Oklahoma because no cross petition was filed by the defendant in error, then this court has no jurisdiction to consider the same because this court can only consider the questions which the Supreme Court of Oklahoma might have considered.

In the case of *Finley* v. *Halliburton*, 251 Fed. page 860:

> "Where a trust company, which made advances to a lessee to enable her to build on the demised ground, sued the lessee and lessor in the same proceedings recovered for rent due, and foreclosure was ordered, the original decree, not having been appealed from the lessee, is conclusive as to her, notwithstanding the lessor's appeal from the decree in favor of the trust company, and a subsequent agreement between the parties."

To the same effect is the case of *Dotterer* v. *Chicago, R. I. & P. R. Co.*, 78 Okla., page 67, 188 Pac. 1055, the syllabus of which reads as follows:

> "This court will not consider whether on the trial of a cause there was error in a ruling against defendant in error when such ruling is not involved in any error assigned by plaintiff in error, in the absence of a cross petition in error."

The fact that the appellant or plaintiff in error, in the Supreme Court of Oklahoma attacked the ruling of the lower court on the question of limitation as to the life estate of W. M. Patterson does not raise the question of the correctness of the court's ruling on the question of his obtaining a life estate.

Assuming that counsel for plaintiff in error may at this time complain of the holding of the trial court we desire to call attention to those cases and statutes which, in our opinion, sustain the judgment of the trial court as to the right of curtesy. It is insisted that chapter 49 of Mansfield's Digest of the Laws of Arkansas makes no reference to an estate by curtesy and that, therefore, the Supreme Court of Oklahoma is in error in sustaining the right of curtesy.

In answer to this contention we respectfully call attention to the Act of Congress of May 2nd, 1890, 26 Stat., page 94, Section 31 of this act provides:

> "That certain general laws of the State of Arkansas in force at the close of the session of the general assembly of that state of eighteen hundred and eighty-three, as published in eighteen hundred and eighty-four in the volume known as Mansfield's Digest of the Statutes of Arkansas, which are not locally inapplicable or in conflict with this act or with any law of Congress, relating to the subjects specially mentioned in this section, are hereby extended over and put in force in the Indian Territory until Congress shall otherwise pro-

vide, that is to say, the provisions of the said general statutes of Arkansas relating to administration."

In the Curtis Act of June 28th, 1898, chapter 517, 30 Stat., page 495 the Laws of Arkansas were extended over and made applicable to conditions in the Indian Territory, and whatever provision was made in the Arkansas Statute with reference to curtesy would apply to conditions in the Indian Territory and we do not think that the contention of counsel in this respect is supported by sound reasoning.

The Supreme Court of Oklahoma in the case of *Johnson* v. *Simpson*, 40 Okla., page 413; 139 Pac., page 129, has construed the two federal statutes, to which reference has been made, and held that curtesy rights would attach in the Indian Territory by reason of the Arkansas laws having been made applicable by the acts of Congress above mentioned. In the first section of the syllabus the law is stated as follows:

> "Curtesy—Existence of Estate. Upon the passage and approval of Act of May 2, 1890, c. 182, 26 St. at L. 94, which extended over and put in force in the Indian Territory the common law of England as adopted by the State of Arkansas, with the proviso excepting Indians and their estates, and Act of June 7, 1897, c. 3, 30 St. at L. 83, which provided that such laws should apply to all persons of the Indian Territory, irrespective of race, and the Curtis Act of June 28, 1898, c. 517, 30 St. at L. 495, which provided that the laws of Indian tribes should no longer be enforced, title by curtesy consummate, as it existed in the State of Arkansas, attached in favor of the husband, to all lands of which the wife became seized during coverture."

If we correctly understand the opinion of this court in the case of *Washington* v. *Miller*, 235 U. S. page 422; 59 L. Ed. page 295, it was held that the Act of May 2, 1890, above referred to "extended over and put in force in the Indian Territory several general laws of the State of Arkansas, among which was chapter 40 of Mansfield's Digest of 1884, relating to descent and distribution."

We quote further from that case the following significant language:

> "But the proviso lost much of its force when the act of June 7, 1897 (30 Stat. at L. 83, chapter 3), declared that 'the laws of the United States and the State of Arkansas in force in the (Indian) Territory shall apply to all persons therein, irrespective of race,' and was practically abrogated when the Act of June 28, 1898 (30 Stat. at L. 495, chap. 517), abolished all tribal courts in the Indian Territory (28) and provided (26) that 'the laws of the various tribes or nations of Indians shall not be enforced at law or in equity by the courts of the United States in the Indian Territory.' Of course, these congressional enactments operated to displace the Creek tribal laws of descent and distribution, and to substitute in their stead the Arkansas law as expressed in chapter 49 Mansfield's Digest."

We submit that these cases sustain the holding of the lower court and that there is no merit in the contention that the laws of Arkansas with reference to curtesy were inapplicable to the Five Civilized Tribes and we leave this phase of the case to discuss the question raised by counsel as to whether or not curtesy rights will attach in a case where the lands were selected for the allottee after death by an administrator

appointed for that purpose. Such are the facts in the case at bar. It is contended by counsel that there was no seisin in the lifetime of the allottee and that therefore curtesy does not attach. In the outset we call the court's attention to the fact that this contention presents a question as to the correctness of the decision of the state court upon a local statute and we insist that the holding of the Supreme Court of Oklahoma is final upon this question. It is our position that the construction by the supreme court of the state of a local statute even though the said statute was made applicable by an act of Congress, is final and not subject to review under the decisions of this court. *Bauserman v. Blunt*, 147 U. S. 648.

The Oklahoma supreme court has held that dower will attach although the lands were selected for the allottee after death. *Cook* v. *Chiles*, 49 Okla. page 321; 152 Pac. page 388. The syllabus of this case reads as follows:

> "The surviving widow of a deceased member of the Choctaw Tribe of Indians who died after his enrollment was finally approved, and before selecting his allotment, where an allotment was afterwards selected in his name by an administrator, and patent issued therefor under the provisions of section 22 of the Act of Congress, July 1, 1902, commonly known as the 'Choctaw, Chickasaw Supplemental Agreement,' is entitled to dower in the lands selected by such administrator."

The principle of law announced in *Cook* v. *Chiles* was reaffirmed and followed in the case of *Morris* v. *Swinney*, 53 Okla. page 163; 155 Pac. page 537, and in this case the court upheld the right of curtesy in lands

selected after death. Our contention is that the case of *Morris* v. *Sweaney* definitely decided the question of law as to curtesy presented in this appeal and that the rule announced in that case is sustained by the great weight of authority.

In *Schultis* v. *McDougal*, 170 Fed., page 529, the circuit court of appeals had under consideration the character of the seisin of the allottee who died before allotment and the court referred in this opinion to section 22 of the Supplemental Treaty ratified September 25, 1902, 30 Stat. page 495, and as we understand the law announced in that case the court held that the land would pass to the heirs in the same manner as if the allottee had died seized thereof.

Reference is made in this opinion to section five of the Act of Congress of April 26, 1906, 34 Stat. page 138, which provides as follows:

> "That all patents or deeds to allottees in any of the Five Civilized Tribes to be hereafter issued, shall issue in the name of the allottee; and if any such allottee shall die before such patent or deed becomes effective; that the title to the lands described therein shall inure to and vest in his heirs; and in case any allottee shall die after the restrictions have been removed, his property shall descend to his heirs or his lawful assigns, as if the patent or deed had issued to the allottee during his life; and all patents heretofore issued where the allottee died before the same became effective, shall be given like effect."

In referring to this section of the federal statute the court said:

> "Here is an express declaration by Congress that the land shall descend to heirs the same as it

would have descended if the patent or deed had issued to the allottee during his life, and it is declared that allotments for allottees who have died shall also thus descend. This interpretation by Congress of its own act leaves no room for doubt as to its intent."

In the recent case of *Ned* v. *Countiss*, 84 Okla. page 138; 213 Pac. page 171, the Supreme Court of Oklahoma in discussing the descent of an allotment selected after death of the allottee said:

> "The lands allotted in the name of a duly enrolled Mississippi Choctaw Indian, who died in August, 1903, intestate, and without issue, before receiving her allotment, must be considered as an ancestral estate, within the meaning of section 2531, Mansfield's Digest of the Statutes of Arkansas, extended over and put in force in the Indian Territory by act of Congress."

In *Ground* v. *Dingman*, 33 Okla., page 760; 127 Pac. page 1078, the Supreme Court of Oklahoma said:

> "The descent and distribution of the allotted lands of a citizen of the Creek Nation, who was living on April 1, 1899, and who died after the passage of the Act of March 1, 1901, c. 676, 31 Stat. at L. 861, after which she was enrolled and certificate of allotment issued in her name, and later patent to the lands therein described issued to her heirs, is, by reason of section 28 of said act, governed by the law of descent and distribution of the Creek Nation, to be applied as if the deceased had received title to her allotment during her lifetime and died seized thereof."

In *Barnett* v. *Waw*, 29 Okla., page 780; 119 Pac., page 418, the law is stated in the second section of the syllabus in the following language:

"In determining who are the heirs of a deceased enrolled Creek Indian, who during her lifetime received the allotment of the use and occupancy of an allotment, which, after her death, was ratified to her heirs by virtue of Section 6 of the Original Creek Treaty (Act March 1, 1901, c. 676, 31 Stat. 861), the laws of descent and distribution of the Creek Nation are to be applied as if the deceased Indian had received title to her allotment during her lifetime and died seized thereof."

The Supreme Court of Oklahoma in the case of *Schellenberger* v. *Powell*, in referring to the Creek Supplemental Treaty and to the devolution of an allotment thereunder used the following language:

"It has been held in *Brady* v. *Sizemore*, 33 Okla. 169, 124 Pac. 615, where a duly enrolled citizen of the Creek Nation died before receiving his allotment, and it was later allotted to his heirs, August 23, 1902 (under the 'Creek Supplemental Agreement,' Act of Congress approved June 30, 1902, ratified July 26, 1902), that the devolution of the allotment is governed by Chapter 49 Mansfield's Digest of the laws of Arkansas (Ind. T. Ann. St. 1899, Secs. 1820-1843), to be applied as if deceased had received title to his allotment and died seized thereof. See *Sanders* v. *Sanders*, 28 Okla. 59, 117 Pac. 338; *Hooks* v. *Kennard*, 28 Okla. 457, 114 Pac. 744; *Barnett* v. *Way*, *supra*; and *Brady* v. *Sizemore*, *supra*."

In *Powell* v. *Cotteaden*, 57 Okla., page 1; 156 Pac., page 661, the Supreme Court of Oklahoma held that dower attached in land selected for her husband after death. Following the rule announced in *Cook* v. *Childs*, *supra*.

> "Under the laws of Arkansas, which were in force in the Indian Territory prior to statehood, a surviving widow is entitled to dower in the lands held by her husband for allotment at the time of his death; said lands subsequently being selected in allotment by an administrator."

In *Moffett* v. *Conley*, 63 Okla., page 3, Mr. Justice Sharp of the Supreme Court of Oklahoma reviewed the authorities at length and held that it was not necessary that the lands be selected prior to death in order to vest rights in heirs of a deceased ancestor selected after the ancestor's death. We quote from that opinion, on page 5, the following significant language:

> "We have already seen that Section 28 of the original agreement authorized allotments of the character in question to be made, and that it was there provided that lands to which the enrolled citizen, if living, would be entitled 'shall descend to his heirs' according to the Creek law. Technically, Jennie Hickory and her brother took their title directly from the tribe. The title taken, however, was not in their own right or by reason of their own enrollment, but in the right of their deceased ancestor and by reason of his tribal enrollment."

It is true that under a strict application of common law rules to the conditions obtaining in the Five Civilized Tribes prior to statehood dower and curtesy would not attach for want of actual seisin or possession in the lifetime. But we are constrained to believe that the rule announced by Mr. Justice Hardy in *Cook* v. *Childs*, *supra*, correctly states the law and that a strict interpretation of the common law rules would do violence to the purpose of the framers of the Treaty of September 25, 1902.

If the contention of counsel for plaintiff in error be correct then it necessarily follows that great inequality would result as to the rights of surviving husbands and wives.

Every member of the Choctaw Tribe of Indians was entitled to an allotment and as was said by Judge Hardy in *Cook* v. *Childs*, it was never intended that two citizens duly enrolled as such, each of whom was entitled to a share in the tribal property, where one had selected his allotment and died, his widow would be endowed of his lands, and the widow of another, who has died before making his selection, should be excluded from all dower rights even though he died in point of time later than the one who in fact actually made his selection in his lifetime (*Cook* v. *Childs*, 49 Okla., page 334).

The right of the member to allot tribal property antedates the allotment and by the actual process of allotment the member takes a definite tract of the common domain in which he formerly owned an undivided interest. As was said in *Schultis* v. *McDougal*, *supra*, "It was a birthright. It came to him by the blood of his tribal parents and not by purchase."

Applying the reasoning of the *Schultis* v. *McDougal* case to the facts in this case we are led to the conclusion that there should be no difference in the rights of widows or husbands as to lands of the deceased spouse, and that the technical rule as to actual seisin, which obtained at common law, has no application under the statutes and treaties to which reference has been made in the cases we have called to the court's attention.

We respectfully insist that the contention of counsel for plaintiff in error is not well grounded and that the rule announced by the Supreme Court of the State of Oklahoma as to the question of curtesy should be affirmed.

Plaintiff in Error's Proposition Number Two.

It is contended by counsel for the plaintiff in error that if W. M. Patterson succeeded to an estate by curtesy in the lands selected after death for his wife, his right to assert such estate is barred "by the federal statutes and by the laws of the State of Arkansas extended in force in the Indian Territory." Reference is made under the foregoing proposition to Sections 4471 and 4476 of Mansfield's Digest of the laws of Arkansas, but we do not find any reference to a controlling federal statute fixing a limitation applicable to the facts in this case. While the statement of the contention of counsel for plaintiff in error might warrant the conclusion that some federal statute is relied upon, yet we are constrained to believe that no federal statute has been pointed out and none can be relied upon as fixing a bar to the cause of action in this case. In the outset we respectfully insist that no federal question is presented by the argument advanced under this assignment of error. Even if it should be admitted that the conclusion reached by the Supreme Court of Oklahoma in this case is erroneous, and even though it should be admitted that it is in conflict with a former decision or that it reverses a former decision, in either event the point decided is one which does not involve any federal statute

or deprive the plaintiff in error of any rights under a federal statute.

In the case of *Bauserman* v. *Blunt*, 147 U. S. 648, 37 L. Ed. 316, this court, in speaking of the construction given a statute of the state, used the following language:

> "The construction given to a statute of a state by the highest judicial tribunal of such state is regarded as a part of the statute, and is as binding upon the courts of the United States as the text. If the highest judicial tribunal of a state adopt new views as to the proper construction of such a statute, and reverse its former decisions, this court will follow the latest settled adjudications."

In *Roth* v. *Ehman*, 17 Otto. 319, 27 L. Ed. 499, this court held that no federal question was presented and we quote from the opinion the following language:

> "The question of the true construction of a will depends wholly upon general rules of law and upon the local statutes, and in no degree upon the constitution, laws or treaties of the United States. *Giles* v. *Little*, 134 U. S. 645; 33 L. Ed. 1062."

If the court should hold adversely to us with reference to this question and reach the conclusion that the construction placed upon the Arkansas statute in this case is reviewable here, we then respectfully suggest that W. M. Patterson would not be barred by the Arkansas statute fixing seven years as a period of limitation, but the controlling statute would be the fifteen year statute in force after the erection of the state.

Subdivision 4, Section 183, Revised Laws of 1921, reads as follows:

"An action for the recovery of real property, not hereinbefore provided for, within fifteen years."

This statute was in force upon the admission of the state into the Union and in our opinion would be the controlling statute for the reason that while Joines may have gone into possession of the land prior to November 16, 1907, he did not assert title thereto except in pursuance of a guardianship sale. He did not attempt to have this sale consummated and finally confirmed until July 14, 1913. No title was ever taken from Patterson and it was evidently assumed by the parties that Patterson had no title or interest in the land, and he did not pretend to have perfect title as to the minors until a sale was confirmed in 1913. Under these circumstances we respectfully insist that the Oklahoma laws were in force and the controlling statute would be the fifteen year statute insofar as Patterson is concerned. This suit having been instituted on the 21st of February, 1920, by the filing of the petition in the District Court of Murray County, Oklahoma, the cause of action would not be barred by the fifteen year statute hereinbefore mentioned (Transcript of Record, page 7).

While it is true that color of title may not be necessary to the acquisition of title by adverse possession, yet the rule seems to be that a claim of title or right by the occupant is necessary (Cyc. Volume 1, page 1028).

The law has been stated by this court in the case of *Harvey* v. *Tyler*, 69 U. S. 349, 17 L. Ed. 876, in the following language:

> "We think this law to be too well settled to need argument to sustain it. There must be title somewhere to all land in this country. Either in the government, or in some one deriving title from the government, state, or national. Anyone in possession, with no claim to the land whatever, must in presumption of law be in possession in amity with and in subservience to that title. Where there is no claim of right, the possession cannot be adverse to the true title."

In *Brackin* v. *Union Pacific Railway Company* 75 Fed. 347, the Circuit Court of Appeals of the Eighth Circuit held in substance that possession must have been "adverse, open, and notorious," and that "it must have been adverse to all others;" citing several cases in support of the principle announced.

This court, in *Ward* v. *Cochran*, 150 U. S. 602, 37 L. Ed. 1195, in speaking of the essential elements of adverse possession, used the following language on page 608:

> "Tested by these definitions, it is obvious that if the title relied on in this case, by the defendant below, was fully described and characterized by the special verdict, it was defective in two very essential particulars, in that it was not found to have been actual and exclusive. A possession not actual, but constructive; not exclusive, but in participation with the owner or others, falls very far short of that kind of adverse possession which deprives the true owner of his title."

Prior to the date of the confirmation of the pretended guardian's sale on July 14, 1913, Joines was in possession without title from any of the heirs of Emma Patterson, deceased, and by seeking a confirmation of the guardianship proceedings in 1913, he thereby ad-

mitted that he was not claiming title adversely to all parties and under such circumstances the controlling statute would be the fifteen year statute fixed by the laws of the territory of Oklahoma made applicable at the advent of statehood.

In this connection we wish to say in passing that while we are cognizant of the fact that the Supreme Court of the State of Oklahoma, in *Patterson* v. *Rousney*, 58 Okla. 185, 159 Pac. 636, has held that the seven year statute of Arkansas would apply to causes where the statute had begun to run prior to statehood, yet we respectfully suggest that the rule announced in that case is not supported by the better reasoning.

In *Bronson* v. *Kinzie*, 1 Howard, page 311, 11 L. Ed. 142, this court held that the state could regulate the modes of procedure and shorten the time within which claims would be barred. This case has been quoted in support of our argument under plaintiff in error's proposition number three.

Plaintiff in Error's Proposition Number Three.

For the purpose of saving space, we shall not restate proposition number three as set forth on page 87 of the brief of plaintiff in error, but as we understand the point made by counsel it is contended in substance that upon the coming of statehood jurisdiction was conferred upon the County Court of Carter County to confirm the pretended guardianship sales proceedings which had been instituted in the Federal Court of the Southern District at Ardmore prior to statehood.

We respectfully call attention to what appears to us as inaccurate statements with reference to the

agreed statement of facts on which the case was tried. Before proceeding with the discussion of the law questions raised under this proposition, we call attention to the statement in the second paragraph of the brief of plaintiff in error, at page 90, wherein it is said that it was agreed that the plaintiff had been in undisputed possession and claiming ownership since the 5th of October, 1907, and to the statement contained in the second paragraph on page 92 of the brief of plaintiff in error, wherein it is said "All papers pertaining to the sale of the land and on file in the United States Court for the Southern District was transmitted to the County Court of Carter County, and such papers were on file in the County Court of Carter County at the time of the confirmation by the County Court of Carter County."

For further information in connection with these statements we call attention to the agreed statement found in the transcript on pages 66-70 inclusive.

Jurisdiction of United States Court for Southern District of Indian Territory.

Sections 3509 to 3911 inclusive of Mansfield's Digest of the Statutes of Arkansas are quoted and relied upon as the statutory authority for the sale of the lands of these minors prior to statehood, but in this connection we call attention to the fact that the guardian was appointed in the Central District at Durant, Indian Territory, and that his powers and authority as such guardian were based upon the appointment made in the Federal Court of the Central District. No probate proceeding was pending in the Southern Dis-

trict at Ardmore other than the proceeding in which this guardian had sought to sell lands located within the confines of the Southern District, but these proceedings disclose upon their face that he was acting under an appointment and by virtue of authority conferred by the probate court in the Central District of the Indian Territory. Assuming that prior to statehood a valid sale could have been conducted of these lands by the guardian, no sale in fact was completed prior to statehood. The proceeding at Ardmore, Indian Territory, as was held by Mr. Justice Clark, was an ancillary proceeding. Patterson's petition to sell land, filed in the Federal District Court at Ardmore prior to statehood, disclosed that he derived his authority by an appointment in the Central District, and remembering that the proceeding in the United States Court at Ardmore was not a probate proceeding instituted in that court, but was in the nature of an ancillary action to the probate proceedings pending in the probate court of the Central District at Durant, we believe that under the provisions of the Enabling Act this ancillary proceeding was not such a probate matter as would be transferred to the County Court of Carter County, Oklahoma. Under the Oklahoma laws no provision is made for such an ancillary proceeding, and while the action instituted in the Federal Court at Ardmore may not have abated, yet the Probate Court of Bryan County, Oklahoma, was the only court which could have inherited probate jurisdiction as to the Patterson minors.

When the County Court of Bryan County took jurisdiction the same was co-extensive with the state

and excluded the jurisdiction of every other county in the state. *Parmenter* v. *Rowe*, 87 Okla. 161, 200 Pac. 683. No principle of law seems to be more thoroughly established by the decisions of the Supreme Court of Oklahoma than the proposition that only one court can exercise probate jurisdiction over the estates of minors and deceased persons. The county court of the county in which the guardianship proceeding is first instituted has exclusive jurisdiction of the estates of minors and no other court can exercise jurisdiction.

In the second section of the syllabus, in the case of *Crosbie* v. *Brewer*, 68 Okla. 16, 158 Pac. 388, the court said:

> "When a county court once lawfully acquires jurisdiction * * * this jurisdiction cannot be lost except in some prescribed, orderly way."

In *Baird* v. *England*, 85 Okla. 276, 205 Pac. 1098, the law is stated in the first section of the syllabus as follows:

> "The county court of the county in which application is first made for letters testamentary or of administration in any of the cases above mentioned, shall have jurisdiction coextensive with the state in the settlement of the estate of the decedent and the sale and distribution of his real estate, and excludes the jurisdiction of the county court of every other county. Section 6195, Revised Laws of Oklahoma 1910."

Counsel for plaintiff in error take the position that subsequent to statehood, both the County Court of Carter County and the County Court of Bryan County had jurisdiction of the estates of these minors. Brief

of plaintiff in error, pages 102 and 103. As we understand the rule announced in the cases last above mentioned, whatever may have been the law prior to statehood, there could not be two courts subsequent to statehood with jurisdiction of the estates of these minors. Such contention is in conflict with the rule announced in *Parmenter* v. *Rouce*, *Crosbie* v. *Brewer*, and *Baird* v. *England*, *supra*.

No Vested Right in the Matter of Procedure.

It is our position that subsequent to statehood the County Court of Carter County was without jurisdiction to proceed with the sale of the lands of these minors for the reason that the County Court of Bryan County inherited probate jurisdiction from the Federal Court of the Central District of the Indian Territory. We do not contend that this proposed sale could not have been completed and perfected after statehood. We do insist that only one court, subsequent to statehood, had jurisdiction of the persons and estates of these minors and that was the County Court of Bryan County. A sale could have been confirmed in that court for the reason that it had jurisdiction of the minors and there could not be two courts in Oklahoma exercising jurisdiction at one and the same time. *Parmenter* v. *Rouce*, *supra*. This would not deprive the plaintiff in error of any rights as the proper steps could have been taken to perfect the guardianship sale in the proper court and thereby the plaintiff in error might have preserved all of his legal rights in the unfinished sale started prior to statehood.

The Supreme Court of Oklahoma, in the case of *Independent Cotton Oil Company* v. *Beacham*, 31 Okla. 384, 120 Pac. 969, held that there was nothing in the constitution or the schedule to the constitution indicating a purpose to restrict the powers of the state legislature to change the modes of procedure as to actions arising prior to the admission of the state into the union. We quote from Volume 31 Oklahoma Report, page 391, as follows:

> "There is no property in a naked cause of action for tort, but simply a cause of action, based upon a personal injury. *Epstein* v. *Handwerker*, 29 Okla. 337, 116 Pac. 789. It is too nebulous a right, if a right at all, to hold inviolate against the right of a sovereign state to remedy its mode of procedure, as the exigencies of the administration of justice may require."

To the same effect is the rule announced by the Kansas Supreme Court in *Cruce* v. *Douglas*, 3 Kansas, page 121, and we quote from page 125 as follows:

> "Whatever belongs merely to the remedy may be altered according to the will of the state, provided the alteration does not impair the obligation of the contract. But if that effect is produced, it is immaterial whether it is done by acting on the remedy or directly on the contract itself. In either case it is protected by the constitution."

In the case of *Bronson* v. *Kinzie*, 1 Howard 311 (11 Law Edition 142), the Supreme Court of the United States, in speaking of the power of the state to change the procedure, used the following language:

> "If the laws of the state passed afterwards had done nothing more than change the remedy

> upon contracts of this description, they would be liable to no constitutional objection. For, undoubtedly, a state may regulate at pleasure the modes of proceeding in its courts in relation to past contracts as well as future. It may, for example, shorten the period of time within which claims shall be barred by the statute of limitations."

The Supreme Court of Oklahoma, in the case of *Adams* v. *Item Biscuit Company*, 162 Pac. 938, 63 Okla. 52, held that a citizen had no right of property in a rule of law, and we quote from the sixth section of the syllabus as follows:

> "The citizen has no property in a rule of law, and while rights which have accrued to him under the operation of existing laws and have thereby become vested may not be taken away by a change of the rules, he cannot be heard to complain if the rule is changed before any rights have accrued to him thereunder."

No person has a vested right in any particular mode of procedure or remedy and if before the trial of a case or final judgment the legislature provides a change of procedure, the new methods must be pursued in perfecting rights of property of litigants. *American National Insurance Co.* v. *Donahue*, 54 Okla. 294, 153 Pac. 819; *Independent Oil Company* v. *Beacham*, 31 Okla. 384, 120 Pac. 961.

We do not contend that the proposed sale in question here could not have been confirmed subsequent to statehood, but inasmuch as there was no confirmation prior to statehood for reasons which are not disclosed in the record, we think the court having power to confirm after statehood was the County Court of Bryan

County and not the County Court of Carter County. No rights were denied any of the parties, but the procedure was changed and the sale authorized in the Federal Court at Ardmore prior to statehood remained an incomplete probate proceeding, which, in our opinion, passed to the court in Oklahoma which had jurisdiction of the persons and estates of these minors. To say that the County Court of Carter County inherited jurisdiction along with the County Court of Bryan County is to contend that two courts in Oklahoma could exercise jurisdiction at one and the same time. Such a rule would be in conflict with the principle announced in *Parmenter* v. *Rouse*, *supra*, and with other cases to which we have called attention.

Validity of Sale Without Confirmation.

We respectfully insist that no valid sale could have been had under the laws of Arkansas in force prior to statehood without a confirmation. Just why the sale in this case was not confirmed in the Federal Court prior to statehood is not disclosed by the record and we had no means of ascertaining why the sale was not confirmed. Under the laws of the State of Oklahoma in force upon the admission of the state there could be no guardianship sale without a confirmation. Whether we test the validity of the sale in this respect with reference to the Arkansas law or whether it be tested insofar as the laws of Oklahoma are concerned, in either event the sale was a nullity without a confirmation. If the contention of counsel for plaintiff in error be correct then the right of the proposed

purchaser to have the sale confirmed would be without limitation as to time. In this case the agreed statement of facts discloses the ages of the minors and it is expressly stipulated that the sale was not confirmed until the 14th day of July, 1913.

In the case of *Apel* v. *Kelzie*, 47 Ark. 419, the supreme court of that state stated the law with reference to the necessity of a confirmation as follows:

> "But, so far as appeared, the sale had never been confirmed. Now, a judicial sale passes no title until it is confirmed; and confirmation will not be presumed, but must be shown. The court is the vendor, and what takes place before final approval is in the nature of a bid, which may be accepted or rejected. An administrator's sale to raise a fund to pay debts is a judicial sale, according to all the tests that can be applied."

In the case of *Alexander* v. *Haden*, 54 Ark. 480, the first section of the syllabus is as follows:

> "A guardians' deed, executed in pursuance of an unconfirmed guardian's sale, passes no title."

The same rule has been announced by the Supreme Court of the State of Oklahoma. *Eaves* v. *Mullen*, 25 Okla. 679. In this case, on page 698, the court said:

> "A valid decree of confirmation of the sale was necessary to pass title to the purchaser at the same, from whom it is alleged plaintiff herein derived his title."

A number of cases are cited in support of this statement of the law, but it will be noted that Mr. Justice Hayes was construing the Oklahoma statutes in force in 1908.

In the case of *Hickory* v. *Campbell*, 75 Okla. 79, the court used the following language:

> "The court, in hearing the issue whether or not the value of the land sold is disproportionate to the amount of the bid, should confine the evidence as to its value on day of sale, and not as to its value on the day of confirmation."

Plaintiff in error takes the position in this case that there is no time limit within which the guardianship sale must be confirmed. The Supreme Court of Oklahoma held that the order of sale could not remain in force for more than one year after the granting of the same without a sale being had, and that the sale in this case was void. In this connection we call attention to the age of Dorothy A. Patterson, now McFarland, who had reached majority when the sale was confirmed on July 14, 1913. Our opinion is that no valid sale had been made of her interest in the lands during minority and that she reached majority before the sale was confirmed and therefore the County Court of Carter County was without jurisdiction to proceed further with the sale of lands in which she was interested (see Transcript, page 68). Neither the County Court of Carter County or the County Court of Bryan County had jurisdiction to proceed in any manner after she attained her majority.

Section 1479, Revised Laws of 1921, of the State of Oklahoma, the same being Section 6566 of the Revised Laws of 1910, reads as follows:

> "No order of sale granted in pursuance of this article (chapter) continues in force more than

one year after granting the same, without a sale being had."

While it might be true that under the Arkansas law there was no limitation of time fixed for the confirmation of a guardianship sale, but under the Oklahoma laws an order to sell at private sale remains in force for six months and an order to sell at public sale for one year, and we think that one or the other of these statutes would control and that in any event the court after statehood would be without jurisdiction to confirm a guardianship sale after the expiration of one year from the date of the order. Plaintiff in error cannot contend that he has any vested rights in this respect and we believe that inasmuch as a sale had not been completed upon the advent of statehood, the law governing confirmation after statehood controls, and no confirmation having been made prior to July, 1913, the court acted without authority and in violation of the laws of the State of Oklahoma.

In the case of *Mires* v. *Hogan*, 79 Okla. 233, the court stated the law in the syllabus as follows:

> "In the absence of a constitutional provision to the contrary, there is no vested right in a statute of limitations before the cause of action is barred under it, although the statute began to run before it was extended or shortened by subsequent statute."

Plaintiff in Error's Proposition Number Four.

Under this proposition of law it is contended in substance that the Supreme Court of Oklahoma erred in not holding that the defendants, Dorothy Patterson

and Shelby A. Patterson, were barred by the two year statute of limitations referred to in the brief of plaintiff in error.

In answer to this contention we respectfully suggest that no Federal question is presented for review under this assignment, and that the construction by the Oklahoma Court upon the Oklahoma statute of limitations is controlling upon this court. *Bauserman* v. *Blunt*, 147 U. S. 655. If, however, the court should disagree with us and hold that the question is reviewable here, we then say that the lower court correctly decided the question of law raised under this assignment in the brief of counsel for plaintiff in error. Assuming that W. M. Patterson succeeded to an estate by curtesy upon the death of his wife, he or his grantee would be entitled to possession during the lifetime of Patterson, and Dorothy Patterson and the other children acquired an interest in the lands subject to the life estate of W. M. Patterson. Under such circumstances we think that Dorothy Patterson and the other children would not be barred by any statute of limitations during the tenure of the owner of the life estate.

In *Orthwein* v. *Thomas*, 127 Ill. 554, 11 Am. St. Rep. 159, the court said:

> "Until the death of the life tenant no statute of limitations began to run against the heirs of Susannah Osborn or their grantees; and laches can only be imputed to them from the time their right of entry accrued."

The same rule was announced in *Jackson* v. *Johnson* by the Supreme Court of New York in the case

reported in 14 American Decision, page 433, wherein we have the following language:

> "A right of entry in favor of a person must exist before the statute of limitations can run against him."

With reference to the application of the statute to Dorothy McFarland, nee Patterson, we call attention to the fact that she reached majority before the sale in fact was confirmed. In other words she was an adult person on the 14th of July, 1913, and the probate court was without authority to proceed in any manner with reference to a sale of her interest in the land, and inasmuch as no title was passed in the guardianship proceedings as to her, the applicable statute of limitations, if any applies at all, would be the fifteen year statute to which we have called attention and not the two year statute cited by counsel for plaintiff in error as to the statute which applies in guardianship sales.

Plaintiff in Error's Proposition Number Five.

We do not deem it necessary to make an extensive reply to the argument advanced under this contention of counsel for plaintiff in error. While it is true, as stated by counsel for plaintiff in error, that the construction placed upon a statute by the highest court of the state from which the statute is taken is controlling as a general rule, yet we do not understand that counsel point out any cases or statutes which raise a federal question, and we respectfully submit that no argument is advanced under this assignment of error which needs serious consideration. Whether the court

in fact reversed a former holding or not, or whether or not the decision reached by the court in this case was correct, is solely and exclusively a state question and in no sense a federal question.

We also wish to call attention to the fact that the questions of law raised in this proposition were not passed upon by the Supreme Court of Oklahoma in any stage of this case, and we do not understand that this court will review questions which were not passed upon by the lower court, but even if it should be assumed that the court refused to follow a construction placed by the Arkansas Supreme Court upon an Arkansas Statute, that would be nothing more nor less than the construction by the Oklahoma Supreme Court of a local statute and would in no sense present a federal question reviewable in this court.

Plaintiff in Error's Proposition Number Six.

In the brief of counsel for plaintiff in error reference is made on page 134 to the validity of a sale where adult and minor heirs did not join under the provisions of section 22 of the Act of Congress of April 26, 1906, 34 Stat. 137, and while mention is made of one or two authorities, we are inclined to believe that counsel for plaintiff in error does not seriously press this proposition of law. No reference is made in the opinion of the Oklahoma Supreme Court to the necessity of a joint sale and the proposition advanced by counsel under this assignment is aside from the issues in the case.

The supreme court held that the attempted sale of the interest of the minors in the lands in controversy was void, but reached that conclusion wholly without

regard to the Act of Congress of April 26, 1906, to which reference is made in the brief of counsel for plaintiff in error. No reference is made by the Supreme Court of Oklahoma to the Act of April 26, 1906, insofar as the same affects the validity of this sale, and we assume that counsel for plaintiff in error cannot seriously insist that this question is reviewable in the Supreme Court of the United States.

CONCLUSION.

In conclusion we respectfully insist:

First: That the respective contentions advanced by counsel for the plaintiff in error present no federal question reviewable in this court.

Second: That the judgment of the Supreme Court of Oklahoma is correct and the case should be affirmed by this court.

Respectfully submitted,

W. F. Semple,
Hayes & McIntosh.

SUPREME COURT OF THE UNITED STATES.

No. 298.—October Term, 1926.

U. Sherman Joines, Petitioner,
vs.
William M. Patterson, Dorothy A. McFarland, Nee Patterson, Shelby A. Patterson, et al., etc.

On Writ of Certiorari to the Supreme Court of the State of Oklahoma.

[May 31, 1927.]

Mr. Justice McReynolds delivered the opinion of the Court.

This controversy concerns title to lands allotted after her death to Emma Patterson, a Choctaw Indian. Once within the Southern Judicial District of Indian Territory, they are now in Murray, Stephens and Carter counties, Oklahoma. By original complaint presented to the Murray County District Court, February 21, 1920, respondents here—William M. Patterson, surviving husband of Mrs. Patterson, and their five children—alleged that although petitioner U. Sherman Joines had held actual and peaceful possession of the lands since July 5, 1907, the legal title thereto was in them. And they asked an appropriate decree establishing their rights.

Mrs. Patterson, resident of the Central Judicial District, Indian Territory, died there May 14, 1906, leaving five minor children, born, respectively, 1894, 1897, 1900, 1903 and 1905. Her surviving husband, father of these children and a white man, was appointed guardian for them by the United States Court, Central District, sitting at Durant (now in Bryan County, Oklahoma). Thereafter, April 24, 1907, he petitioned the United States Court for the Southern District, sitting at Ardmore (now in Carter County, Oklahoma), to sell the lands. May 2, 1907, that court authorized the sale, and on the following October 8 the guardian filed his report showing sale of them at public outcry July 5, 1907, for two thousand dollars to U. Sherman Joines, petitioner here, the highest bidder. He also stated that, acting as their guardian, he had conveyed to Joines all interest of the minors in the lands.

October 5, 1907, purporting to act as guardian, Patterson undertook by deed to convey to Joines all the minors' interest in the lands. Since then Joines has held open and adverse possession.

July 14, 1913, the County Court, Carter County, Oklahoma, after reciting its succession to the United States court sitting at Ardmore, undertook to confirm the sale made in 1907. August 5, 1913, Patterson, purporting to act as guardian, again undertook by deed to convey to petitioner the minors' right, title and interest in and to the lands. This deed recited the court proceedings during 1907 and the guardian's action thereunder, including his report of sale; also the 1913 order of confirmation by the Carter County Court. It further stated that court was "authorized to do any and all things herein which the said United States court for the Southern District of the Indian Territory, sitting at Ardmore, could have done."

The District Court for Murray County heard the present cause without a jury upon an agreed statement of facts, and held—

> That William M. Patterson acquired a life estate by courtesy in the lands which had been barred by the seven-year statute of limitations in force within Indian Territory October 5, 1907.
>
> That by putting Joines into possession of the lands and allowing him to retain this for fourteen years without complaint Patterson estopped himself from asserting any claim thereto.
>
> That the United States court for the Southern District of Indian Territory had jurisdiction to authorize sale by the guardian of the minor's interest and confirmation thereof by the County Court, Carter County, Oklahoma, was not void.
>
> That the adult children and heirs are barred by the statute of limitations from asserting any claim to the lands.

An appropriate decree adjudging the issues for Joines followed.

Upon appeal, the Supreme Court of Oklahoma first upheld the trial court, but, after a rehearing, it disapproved all the above-stated conclusions, reversed the judgment and directed final decree for respondents here. 114 Okla. 9.

The Supreme Court accepted and acted upon at least two conclusions which we think are erroneous. (1) That the proceeding in the United States court at Ardmore to sell the lands was merely ancillary to the main guardianship matter at Durant, in the Central District, and therefore should have been transferred to Bryan, not

to Carter County. (2) That the Arkansas seven-year statute of limitations—§ 4471 Mansfield's Digest—did not commence to run against William M. Patterson and in favor of Joines when the latter took possession, since no interest passed to him—the court proceedings and the guardian's deed being wholly insufficient to give even color of title. These conclusions were based upon questions of federal law wrongly determined. They were acted upon by the court below. We must, therefore, reverse its judgment and remand the cause for further proceedings. See *Whitehead* v. *Galloway*, 249 U. S. 79.

Section 30, Act of May 2, 1890, c. 182, 26 Stat. 81, 94, as amended by the Act of March 1, 1895, c. 145, 28 Stat. 693, divided Indian Territory into three judicial districts — Northern, Central and Southern—and defined their limits. Section 31 extended over it certain general laws of Arkansas as published in Mansfield's Digest. Among these were Chapters 20, 49, 73 and 97, relating, respectively, to the common and statute law of England, descent and distribution, guardians, curators and wards, and limitations.

Section 32 of the same Act provided that "county", in the laws of Arkansas so extended, should mean judicial division (afterwards district), and "Indian Territory" might be substituted for "State of Arkansas."

Section 22, Act of Congress approved July 1, 1902, c. 1362, 32 Stat. 641, 643—the Choctaw Chickasaw Supplemental Agreement—provided: "If any person whose name appears upon the rolls, prepared as herein provided, shall have died subsequent to the ratification of this agreement and before receiving his allotment of land the lands to which such person would have been entitled if living shall be allotted in his name, and shall, together with his proportionate share of other tribal property, descend to his heirs according to the laws of descent and distribution as provided in Chapter forty-nine of Mansfield's Digest of the Statutes of Arkansas: *Provided*, That the allotment thus to be made shall be selected by a duly appointed administrator or executor."

When extended over Indian Territory, the specified laws of Arkansas carried the settled constructions placed upon them by courts of that State. So construed, they became, in effect, laws of the United States as though originally enacted by Congress for government of the Territory. *Willis* v. *Eastern Trust & Banking Co.*, 169 U. S. 295, 307; *James* v. *Appel*, 192 U. S. 129, 135;

Gidney v. *Chappel*, 241 U. S. 99, 102. See also *Byrd* v. *State*, 99 Okla. 165.

Oklahoma, with boundaries including Indian Territory, came into the Union November 16, 1907. The Enabling Act, approved June 16, 1906, c. 3335, 34 Stat. 267, 277—as amended by the Act of March 4, 1907, c. 2911, 34 Stat. 1286, 1287, directed—

"Sec. 19. That the courts of original jurisdiction of such State shall be deemed to be the successor of all courts of original jurisdiction of said Territories and as such take and retain custody of all records, dockets, journals, and files of such court except in causes transferred therefrom, as herein provided; the files and papers in such transferred cases shall be transferred to the proper United States circuit or district court, together with a transcript of all book entries to complete the record in such particular case so transferred.

"Sec. 20. That all causes, proceedings, and matters, civil or criminal, pending in the district courts of Oklahoma Territory, or in the United States courts in the Indian Territory, at the time said Territories become a State, not transferred to the United States circuit or district courts in the State of Oklahoma, shall be proceeded with, held, and determined by the courts of said State, the successors of said district courts of the Territory of Oklahoma, and the United States courts in the Indian Territory, with the right to prosecute appeals or writs of error to the supreme or appellate court of said State, and also with the same right to prosecute appeals or writs of error from the final determination in such cases made by the supreme or appellate court of such State to the Supreme Court of the United States, as is provided by law for appeals and writs of error from the supreme or final appellate court of a State to the Supreme Court of the United States."

The Constitution of Oklahoma provides—

"Section 1 ['Schedule']. No existing rights, actions, suits, proceedings, contracts, or claims shall be affected by the change in the forms of government, but all shall continue as if no change in the forms of government had taken place. And all processes which may have been issued previous to the admission of the State into the Union under the authority of the Territory of Oklahoma or under the authority of the laws in force in the Indian Territory shall be as valid as if issued in the name of the State."

"Section 2. All laws in force in the Territory of Oklahoma at the time of the admission of the State into the Union, which are not repugnant to this constitution, and which are not locally inapplicable, shall be extended to and remain in force in the State of Oklahoma until they expire by their own limitation or are altered or repealed by law."

"Section 23. When this Constitution shall go into effect, the books, records, papers, and proceedings of the probate court in each county, and all causes and matters of administration and guardianship, and other matters pending therein, shall be transferred to the county court of such county, except of Day County, which shall be transferred to the County Court of Ellis County, and the county courts of the respective counties shall proceed to final decree or judgment, order, or other termination in the said several matters and causes as the said probate court might have done if this constitution had not been adopted. The district court of any county, the successor of the United States court for the Indian Territory, in each of the counties formed in whole or in part in the Indian Territory, shall transfer to the county court of such county all matters, proceedings, records, books, papers and documents appertaining to all causes or proceedings relating to estates; *Provided*, that the legislature may provide for the transfer of any of said matters and causes to another county than herein prescribed."

Section 3509, Mansfield's Digest. "When it shall appear that it would be for the benefit of a ward that his real estate, or any part thereof, be sold or leased and the proceeds put on interest, or invested in productive stocks, or in other real estate, his guardian or curator may sell or lease the same accordingly upon obtaining an order for such sale or lease from the court of probate of the county in which such real estate or the greater part thereof shall be situate." Sections 3510 and 3511 prescribe the procedure for such causes.

Reed et al. v. *Hart*, 45 Ark. 41, 46, 48 (1885), distinctly holds that the court of the county wherein lies real estate belonging to a ward is the proper tribunal to entertain an application for its sale by his guardian. The opinion declares: "There had, however, been provisions made for the sale of lands, on the application of administrators and executors, for the payment of debts. They were adopted early in our state history, being found in the Revised Code

(Sec. 147), and remained in force until the adoption of the Civil Code of 1868. They required that the application for such an order should be made to the probate court of the county *in which the lands are situate*. The Act of December 23, 1846, enlarged the scope of purposes for which such sales might be made, and associated 'guardians' with personal representatives (*ubi supra*) but made no change as to the tribunal. It may fairly be inferred that, by this association, the Legislature contemplated that guardians should conform to the same rule and make their applications for the sale of lands in the county where they lay. . . . This is the law to this day, and has been brought forward into Mansfield's Digest, Sec. 3509. This displays a system by which we endeavor to supply the omission in the Act of 1846, which fails to designate the probate court meant, by reasoning from the organic unity of the whole system." And see *McHarry* v. *Eatman*, 29 Okla. 46, 53.

Under the statute thus construed, the court for the Southern Judicial District, Indian Territory, at Ardmore had jurisdiction of the guardian's petition to sell. The cause there was not merely ancillary to the original guardianship proceeding in the Central District, wherein Patterson was appointed. It had the status of an independent suit.

The Enabling Act directed that causes pending in the United States courts for Indian Territory should be proceeded with and determined by the successor courts of Oklahoma. As we understand the opinion below, the court recognized that if the guardian's suit for sale, begun at Ardmore, was an original and independent one transfer of it to the Carter County court for further action was proper. We think it was an original proceeding and therefore was transferred to the proper court for further action according to the rights of the parties. See *Devault* v. *Cline*, 35 Okla. 197, and *Bailey* v. *Jones*, 96 Okla. 56.

Joines went into open, peaceful possession of the allotted lands October 5, 1907, when the following parts of Chapter 97, Mansfield's digest, were in force—

"Section 4471. No person or persons, or their heirs, shall have, sue or maintain any action or suit, either in law or equity, for any lands, tenements or hereditaments but within seven years next after his, her or their right to commence, have or maintain such suit shall have come, fallen or accrued; and all suits, either in law

or equity, for the recovery of any lands, tenements or hereditaments shall be had and sued within seven years next after title or cause of action accrued, and no time after said seven years shall have passed. . . .

"Section 4476. No action for the recovery of real property, when the plaintiff does not claim title to the lands, shall be brought or maintained when the plaintiff, or his testator or intestate, has been five years out of possession."

Under the settled construction given to the seven-year statute of limitations by the courts of Arkansas, it began to run against Patterson when Joines took possession. "So long as a man is in possession of land, claiming title, however wrongfully, and with whatever degree of knowledge that he has no right, so long the real owner is out of possession, in a constructive as well as an actual sense. It is of the nature of the statute of limitation, when applied to civil actions, in effect, to mature a wrong into a right, by cutting off the remedy. To warrant its application in ejectment, the books require *color of title*, by deed or other documental semblance of right in the defendant, only when the defense is founded on a *constructive adverse possession*. But neither a deed nor any equivalent muniment is necessary, where the possession is indicated by *actual occupation, and any other evidence of an adverse claim exists*. The muniment is but one circumstance by which to make out an adverse possession." *Ferguson* v. *Peden*, 33 Ark. 150, 155; *Jacks* v. *Chafin et al.* (1879), 34 Stat. 534, 541; *Logan et al.* v. *Jelks*, id. 547, 549.

The Supreme Court of Oklahoma seems definitely to have approved the doctrine that rights of action arising in Indian Territory prior to statehood remained subject to the Arkansas statute of limitations. *Patterson* v. *Rousney*, 58 Okla. 185, 202; *Davis* v. *Foley*, 60 Okla. 87, 88. And see *U. S. Fidelity, etc. Co.* v. *Fidelity Trust Co.*, 49 Okla. 398, 408; *Sandlin et al.* v. *Barker*, 95 Okla. 113, 117.

Considering our conclusions in respect of the two federal questions already dealt with and views long accepted by the court below, it seems unnecessary for us now to consider other points relied on by counsel.

Reversed.